

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

V.

COLTER CONWAY

Appellant

: No. 1759 MDA 2025

Appeal from the Judgment of Sentence Entered November 21, 2025
In the Court of Common Pleas of Centre County Criminal Division at
No(s): CP-14-CR-0000101-2025

BEFORE: LAZARUS, P.J., STABILE, J., and BENDER, P.J.E.

MEMORANDUM BY LAZARUS, P.J.:

FILED: OCTOBER 23, 2026

Colter Conway appeals from the judgment of sentence, entered in the Court of Common Pleas of Centre County, after a jury convicted him of one count of terroristic threats.¹ Conway raises sufficiency and weight-of-the-evidence claims, and asserts that the trial court erred by declining to deliver a self-defense jury instruction and by refusing to grant a new trial based on his claim that the prosecution committed a **Brady**² violation. Upon review, we affirm the conviction but vacate the judgment of sentence and remand for further proceedings consistent with this memorandum.

¹ 18 Pa.C.S.A. § 2706(a)(1). Conway was also convicted of one count of harassment, but the trial court vacated that conviction at the post-verdict-motion phase, with the consent of the Commonwealth. **See *id.*** at § 2709(a)(1); Order, 9/2/25.

² ***Brady v. Maryland***, 373 U.S. 83 (1963).

Conway's terroristic threats charge stemmed from an altercation that took place at a church on December 8, 2024, between Conway and Joshua Fisher (Joshua),³ and in the presence of Elsie Fisher (Elsie), Joshua's mother (collectively, the Fishers). **See** N.T. Trial, 7/30/25, at 37–39. Conway allegedly sustained a cut on his finger during the altercation. **See id.** at 48. People from the church came to break up the fight, and Joshua and Elsie left. **See id.** at 40, 99–100. Conway then called the police. **See id.** at 47, 98–100.

Officer Andrew Hurd, the responding patrol officer, arrived on scene and spoke to Conway inside the church. **See id.** at 99. Conway told Officer Hurd that there was a physical and verbal altercation involving both Elsie and Joshua, and Officer Hurd observed some red marks on Conway's hand. **See id.** at 100. After hearing Conway's side of the story, Officer Hurd said he would have to speak to Elsie and Joshua as part of his investigation. **See id.** at 99–100.

Approximately three hours later, Conway called Officer Hurd to ask for an update on the investigation. **See id.** at 102. Officer Hurd testified that Conway then "started to describe the level of force that he would use to prevent that incident from occurring again, during which he said, [']I have no

³ Notably, Joshua failed to appear at the trial and did not testify. **See** N.T. Trial, 7/30/25, at 4–5. The Commonwealth said it could not explain his absence. **See id.** at 5. Elsie appeared and testified on behalf of the Commonwealth. **See id.** at 35–50.

problem eliminating a felon.[']” **See id.** at 104. Officer Hurd said he “cautioned [Conway] to ensure that any force that he would use would be inappropriate, to which he said, [']I have no problem taking a murder charge to a jury trial.[']” **See id.** Officer Hurd interpreted this statement as a threat. **See id.** at 102.

Pastor James/Doug Conway (Pastor Doug)⁴ arrived at the church and found a “commotion going on,” with the police already on the scene. **See** N.T. Trial, 7/30/25, at 54. He learned an incident had occurred between Conway and the Fishers. **See id.** Later that evening, Pastor Doug received Snapchat messages from Conway. **See id.** at 54–55. The first message said:

There’s a saying[,] Doug, kill or be killed, take or be taken from. When survival kicks in there’s no telling what someone will do. You should know that from war. Guess it’s been [a while] since you’ve seen what violence and abuse can do to a man. Josh[ua] Fisher is no exception[,] and it [would be a shame] for something to happen to Elsie[’s] son because he couldn’t control his temper. You have no idea what I’ve been through physically, emotionally[,] but I think everyone will soon see how precious life is **if** Josh[ua] acts on his emotions again. Good night[,] pastor[,] and prayers for us all.

Id. at 44, 57–58; Commonwealth Ex. 1 (emphasis added). Pastor Doug found this message intimidating and manipulative despite its use of the conditional word “if.” **See** N.T. Trial, 7/30/25, at 67–68.

In a second Snapchat message to Pastor Doug, Conway said:

⁴ The pastor was apparently known as both James and Doug. Though his last name is also Conway, he is not related to defendant Conway. **See** N.T. Trial, 7/30/25, at 46; Appellant’s Brief, at 15 n.5.

Spoke to the DA's office, the parole department[,] and the police[,] Doug[,] regarding Josh[ua] Fisher[.] . . . I assume everyone will do the right thing unless the church itself or anyone else wants to be sued and[/]or prosecuted in court. Hopefully things will be resolved peacefully. Have a blessed Monday.

N.T. Trial, 7/30/25, at 58–59; Commonwealth Exhibit 2 (ellipses in original).

Pastor Doug found this message very concerning and “took it as a threat.”

See N.T. Trial, 7/30/25, at 58. He told Conway the incident was in the hands of the police and asked Conway to stop texting him about it. **See id.** He interpreted the text messages as Conway “trying to get [him] to go along with what he was doing” and attempting to intimidate him. **See id.** at 59–60.

On December 9, 2024, the day after the incident, Pastor Doug showed the Fishers Conway’s text messages. **See id.** at 41–42, 44–45, 60. Pastor Doug testified that he wanted them to be aware of the messages because he perceived them as a threat. **See id.** at 60. He also showed them to Officer Hurd. **See id.** at 60–61, 107–09.

Conway also sent text messages to Kimberly Cheskey, his probation officer, between December 8, 2024, and December 11, 2024. **See id.** at 72–74.⁵ On December 8th, Conway sent PO Cheskey screenshots of messages he sent to Pastor Doug. **See id.** at 78–79, 84; Commonwealth Exhibit 4. The first said:

Hey Doug, we had a[n] issue at the church. Josh[ua] Fisher assaulted I, Colter, and the police had to be called. Dorothy confirmed that Josh[ua] assaulted I, Colter, another member of the church[,] I believe. I spoke to the Bellefonte police[,] Doug[,]

⁵ Only a portion of these messages were introduced at trial. **See** N.T. Trial, 7/30/25, at 83.

and the[y're] acting as if the[y're] not going to do a thing about Josh[ua] Fisher.

N.T. Trial, 7/30/25, at 78–79; Commonwealth Exhibit 4. Another screenshot showed a message Conway sent to Hurd, which said, “Someone is permanently going to put Josh[ua] Fisher down if he doesn’t get control of himself.” N.T. Trial, 7/30/25, at 79; Commonwealth Exhibit 4. Probation Officer Cheskey testified she found this message threatening, based on the words themselves, her experiences and personal beliefs, and the content of her full conversation with Conway. **See** N.T. Trial, 7/30/25, at 85, 95.

Conway also sent two text messages to PO Cheskey containing personal information about the Fishers, including a photo of Joshua and possible addresses for both. **See id.** at 79–82. Commonwealth Exhibits 5 & 6. Probation Officer Cheskey felt concerned that Conway was doing research to locate them. **See** N.T. Trial, 7/30/25, at 85. Conway sent PO Cheskey another message saying, “In most cases, simply sharing someone’s criminal record is not a crime in the United States,” though he noted there are times when it might be considered illegal. **See** Commonwealth Exhibit 7. He then continued, “Juries typically don’t back felons with violent charges,” and provided a definition of self-defense. **See** N.T. Trial, 7/30/25, at 82; Commonwealth Exhibit 7. Asked how she interpreted this message, PO Cheskey said, “I took it as if he’s already creating his argument for a violent act. He is already planning his defense when it comes to juries.” **See** N.T. Trial, 7/30/25, at 82. Probation Officer Cheskey also recounted a phone call with Conway that took place on December 9, 2024:

He proceeds to then say if [Joshua] approaches him again. I stopped him, and I said, please, do not continue further. I don't want to have to act on this.

And he goes, well, I'm just saying, if he approaches me again, I will put him down.

See N.T. Trial, 7/30/25, at 83–84.

On December 11th, Officer Hurd received a voicemail from Conway. **See id.** at 110. According to Officer Hurd, Conway expressed disappointment with the progress of the investigation. **See id.** at 110. Officer Hurd testified that “[t]hroughout the voicemail that [Conway] left, he did imply he would be judge, jury[,], and executioner if he had to use force again.” **See id.** at 111.

Officer Hurd was concerned for Joshua's safety, so he reached out to him on December 8th and multiple times thereafter to tell him about Conway's statements. **See id.** at 112. He eventually reached Joshua on December 18, 2024 and let him know about Conway's communications. **See id.** at 112–13.

Conway testified on his own behalf. He said the December 8th altercation left him “terrified for [his] life.” **See id.** at 127. Over the next few days, he stated, he felt like the authorities and others at the church were not taking the situation very seriously. **See id.** at 127–28. He denied threatening to commit a crime of violence against Joshua and said he did not believe he had intent to terrorize someone else. **See id.** at 128. Instead, he explained, when he made the statements, he “was basically referencing that [he] would do what is legally proper to protect [him]self, including others.” **See id.** at 129–30. He said, “[M]y understanding is that when a violent crime is committed, in certain circumstances and scenarios[,], a person has the right

to use physical force back to protect themselves. But of course, I did not make [sic] any physical harm to anyone.” **See id.** at 130.

The jury found Conway guilty of one count of terroristic threats and one count of harassment. Conway filed a post-verdict motion on August 7, 2025, asserting weight-of-the-evidence claims. On August 20, 2025, after a hearing, the trial court granted the motion in part and denied it in part, vacating the harassment conviction, but denying Conway’s request to vacate the terroristic threats conviction. **See** Order, 8/20/25; N.T. Post-Verdict Motions Hearing, 8/20/25, at 3–4, 8; **see also** n.1, *supra*. On August 26, 2025, Conway was sentenced to 90 days to 24 months of incarceration, with 11 days of credit for time served.⁶ **See** N.T. Sentencing, 8/26/25, at 18; Order, 8/26/25.

Conway filed a post-sentence motion on September 5, 2025, seeking a new trial and/or dismissal of his terroristic threats conviction based on the weight of the evidence, the trial court’s failure to give a self-defense jury instruction, and an alleged **Brady** violation based on, *inter alia*, failure to produce in pre-trial discovery a recorded voicemail Conway left for Hurd. **See** Post-Sentence Motion, 9/5/25, at ¶¶ 6–14, 16–19, 21–36. The motion also

⁶ Conway requested a state prison sentence. **See** N.T. Sentencing, 9/26/25, at 9–10. The trial court had intended to impose a shorter sentence to allow Conway to be incarcerated in the county correctional facility. **See id.** at 16–17. It acceded to Conway’s request, but told him if he changed his mind, he could include that request in his post-sentence motion, and the court would reduce his maximum sentence to 23 and a half months’ imprisonment so he could remain at the county facility. **See id.** at 18–20, 21–22.

included a request to modify Conway's sentence to reflect additional credit for time served. **Id.** at ¶¶ 38–49.⁷ The trial court held a hearing on the post-sentence motion on October 29, 2025. **See** N.T. Post-Sentence Motions Hearing, 10/29/25. Notably, defense counsel requested, and was granted, the opportunity to have the record remain open for fourteen days so he could listen to the voicemail on which he based his **Brady** claim and, if desired, file a further brief on the **Brady** issue. **See id.** at 11–14. On October 31, 2025, the trial court granted Conway's motion to modify sentence to provide additional credit for time served. **See** Order, 10/31/25.

On November 21, 2025, after the parties filed letter briefs on the **Brady** issue, the trial court denied the motion save for the issue of credit for time served. **See** Opinion and Order, 11/21/25. Conway filed the instant, timely appeal on December 12, 2025, and a timely court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. He raises the following issues for our review:

1. Whether the trial court erred in failing to tender a requested self-defense point for charge when the evidence at trial clearly demonstrated that [] Conway's statements were tantamount to a warning as to how he would justifiably react if ever attacked by his prior assailant again, which was a prelude to his legitimately acting in self-defense in the future and which would have demonstrated that he did not have the requisite

⁷ Conway's attorney also filed a conditional motion to modify sentence in the event Conway changed his mind about going to a county correctional facility rather than state prison. **See id.** at ¶¶ 51–53; **supra** at n.5. Conway declined to make that request. **See** N.T. Post-Sentence Motions Hearing, 10/29/25, at 3.

mens rea; namely[,] an intent to terrorize another and/or threaten any type of crime of violence[.]

2. Whether the evidence was insufficient to support a charge of terroristic threats[,] since the required *mens rea* of an intent to terrorize was effectively nullified by each statement largely being conditioned upon the happening of [] Conway potentially being assaulted again in the future and because no crime of violence was declared in that his statements about the consequences if there would be any subsequent physicalities [sic] were made in the context of a future legitimate act and justifiable use of self-defense that would be undertaken by [] Conway only if he were to be attacked again, which nullified there being any possible criminality being attached to those later actions[.]
3. Whether the jury's verdict was against the weight of the evidence as to the terroristic threats conviction[,] since the required *mens rea* of an intent to terrorize was effectively nullified by each statement largely being conditioned upon the happening of [Conway] potentially being assaulted again in the future and because no crime of violence was declared in that his statements about the consequences if there would be any subsequent physicalities [sic] were made in the context of a future legitimate act and justifiable use of self-defense that would be undertaken by [] Conway only if he were to be attacked again, which nullified there being any possible criminality being attached to those later actions[.]
4. Whether the trial court erred in failing to grant a new trial after it was demonstrated that **Brady** material in the form of a voicemail, which was in the possession of the police during the course of trial, was not produced in pre-trial discovery and this evidence was favorable to [] Conway[,] as its substance when read as a whole and tone obviated that his statements were intended to terrorize another or that a crime of violence was threatened and prejudice ensued to [] Conway as demonstrated by his being convicted of the charge of terroristic threats[.]

Appellant's Brief, at 7–9 (unnecessary capitalization removed).

In his first issue, Conway argues that the trial court erred in failing to give a self-defense jury instruction, because his statements arose from a fear

that he was still in imminent danger after the recent attack, and his fear was exacerbated by his perception that the police investigation was moving too slowly. **See** Appellant's Brief, at 31–33. He claims to have been "overwhelmed [by] the concern that he would likely be attacked again as he perseverated and became preoccupied about what his assailant might do[.]" **See id.** at 32. Thus, Conway believes his statements constituted "warnings, predictions, or advice, rather than threats" as to how he would respond if attacked and were meant to dissuade Joshua from attacking him. **See id.** at 33. He asserts, therefore, that because statements "constitute a non-lethal type of force," he met the requirements for a self-defense claim. **See id.**

"In reviewing a challenge to the trial court's refusal to give a specific jury instruction, it is the function of this Court to determine whether the record supports the trial court's decision." **Commonwealth v. Buterbaugh**, 91 A.3d 1247, 1257 (Pa. Super. 2014) (en banc), quoting **Commonwealth v. Thomas**, 904 A.2d 964, 970 (Pa. Super. 2006). "[A] trial court should not instruct the jury on legal principles which have no application to the facts presented at trial." **Buterbaugh**, 91 A.3d at 1257 (quotation marks and citation omitted). We review for abuse of discretion or error of law. **Commonwealth v. Leaner**, 202 A.3d 749, 782–83 (Pa. Super. 2019). "The 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 [a]ppellant was prejudiced by that refusal." **Commonwealth v. Sandusky**, 77 A.3d 663, 667 (Pa. Super. 2013), quoting **Thomas**, 904 A.2d at 970.

The justification of self-defense is defined as follows: "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 person on the present occasion." 18 Pa.C.S.A. § 505(a). "While there is no burden on a defendant to prove the claim, before the defense is properly at issue at trial, there must be some evidence, from whatever source, to justify a finding of self-defense." **Commonwealth v. Torres**, 766 A.2d 342, 345 (Pa. 2001). Once any evidence is presented, by either side, to support the claim for self-defense, "the Commonwealth bears the burden to disprove such a defense beyond a reasonable doubt." **See id.**

Where a defendant who raises a self-defense claim is charged with battery, rather than homicide,⁸ "force may be met with force so long as it is only force enough to repel the attack." **See Commonwealth v. Witherspoon**, 730 A.2d 496, 499 (Pa. Super 1999), quoting **Commonwealth v. Pollino**, 467 A.2d 1298, 1301 (Pa. 1983). Furthermore,

⁸ In homicide cases, a claim for self-defense requires a showing that:

1) the defendant reasonably believed that 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 threat that resulted in the slaying; and 3) the defendant did not violate a duty to retreat.

See Commonwealth v. Green, 273 A.3d 1080, 1085 (Pa. Super. 2022), quoting **Commonwealth v. Jones**, 271 A.3d 452, 458 (Pa. Super. 2021) (alteration in original).

where the case does not involve a homicide, retreat is generally not required.⁹ A defendant's determination that it was necessary to act in self-defense must be reasonable. **See, e.g., Green**, 273 A.3d at 1086–87.

The trial court reasoned that the evidence presented at trial did not demonstrate that Conway reasonably believed he needed to protect himself or others from imminent death or bodily injury. **See** Opinion and Order Denying Post-Sentence Motions, 11/21/25, at 5; Trial Court Opinion, 1/8/26, at 1-2 (unpaginated) (self-defense issue fully addressed in November 2025 order and opinion). The original interaction between Conway and Joshua was a “minor altercation involving name-calling and punching.” **See** Opinion and Order Denying Post-Sentence Motions, 11/21/25, at 5. Furthermore, Joshua was nowhere near Conway when Conway made his statements to Officer Hurd, Pastor Doug, or PO Cheskey. **See id.** Thus, “[t]here was no immediate necessity for [Conway] to protect himself or others at the time he made the threatening statements.” **See id.** Finally, there was evidence that Conway provoked the December 8th altercation. **See id.**

⁹ The relevant subsection provides:

Except as otherwise required by this subsection, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do[,], or abstaining from any lawful action.

18 Pa.C.S.A. § 505(b)(3).

We find the trial court did not err in rejecting Conway's proposed jury instruction. Conway failed to produce any authority to support a self-defense jury instruction on the terroristic threats charge, or that the defense may even be used for the crime.¹⁰ In fact, at the post-sentence motions hearing, he acknowledged,

I'm going to concede that this is probably a case of first precedence [sic]. Usually, you're giving the instruction in the context of some kind of actual physical confrontation. . . . What I'm [] trying to posit to the [c]ourt is that when somebody is about to be attacked or feels they're about to be attacked, and they engage in a preemptive strike, punching them first so they don't get punched, that kind of falls into that avenue of self-defense.

N.T. Post-Sentence Motions Hearing, 10/29/25, at 8–9. Thus, we conclude that a self-defense jury instruction is inapplicable to terroristic threats, where no force was alleged or involved.

However, even assuming *arguendo* that self-defense can apply to terroristic threats, Conway's fear had to be objectively reasonable. We agree with the trial court that it was not. Conway's subjective fear, which he admits arose from preoccupation and perseveration, **see** Appellant's Brief, at 32, cannot overcome the reality that Conway had no objective reason to believe Joshua intended to renew any attacks, much less employ deadly force that

¹⁰ All the cases Conway cites involve self-defense in response to **physical threats**. **See** Appellant's Brief, at 30–31, 34–35; **see also Commonwealth v. Walker**, 2019 WL 5095841, at *2–*3 (Pa. Super. filed Oct. 11, 2019) (rejecting defendant's argument that trial court should have given self-defense jury instruction to negate intent to terrorize on terroristic threats charge, where there was no evidence wife physically attacked defendant). **See** Pa.R.A.P. 126(b) (non-precedential decisions filed after May 1, 2019, may be cited for persuasive value).

would require Conway to respond with corresponding deadly force. According to the testimony, Joshua had not even contacted Conway since the altercation. **See** N.T. Trial, 7/30/25, at 41. Thus, we cannot find the trial court abused its discretion in denying Conway's request for a self-defense jury instruction.

Second, Conway argues the evidence was insufficient to support a conviction for terroristic threats because he lacked the necessary *mens rea*. **See** Appellant's Brief, at 36. He claims he did not intend to terrorize Joshua, but rather that the statements were the result of "his active concern about the happening of *in futuro* act[,] entirely premised upon qualified antecedent conduct by his intended audience; namely, [Joshua], which statement was made as a warning to deter the feared precedent act from reoccurring." **See id.** Conway also asserts that the Commonwealth did not establish *actus reas*, because "the responsive physical act at issue would be justifiable self-defense." **See id.** He acknowledges that this Court has previously affirmed convictions for terroristic threats where the threats were made conditionally, but distinguishes the instant case because his own threats were conditioned on Joshua taking action that is criminal in nature, and to which he would be able to respond "in a justifiable act of self-defense." **See id.** at 37–38. Finally, he analogizes spur-of-the-moment threats made in anger, which do not constitute terroristic threats, to statements arising out of genuine fear of being attacked, saying if one is excepted from the statute, the other ought to be as well. **See id.** at 38.

In reviewing a sufficiency claim, our standard of review is as follows:

The standard we apply 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, 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. 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. Demulter, 314 A.3d 934, 937 (Pa. Super. 2024), quoting ***Commonwealth v. Reed***, 216 A.3d 1114, 1119 (Pa. Super. 2019).

A person is guilty of terroristic threats if, *inter alia*, he or she “communicates, either directly or indirectly, a threat to[] commit any crime of violence with intent to terrorize another[.]” 18 Pa.C.S.A. § 2706(a)(1). To prove a defendant committed the crime of terroristic threats, the Commonwealth must prove beyond a reasonable doubt “that 1) the defendant made a threat to commit a crime of violence, and 2) the threat was communicated with the intent to terrorize another or with reckless disregard for the risk of causing terror.” ***See Commonwealth v. Beasley***, 138 A.3d 39, 46 (Pa. Super. 2016) (citations omitted). “The Commonwealth does not have to prove that the defendant had the ability to carry out the threat or that the threatened individual believed the defendant would carry out the threat,

as neither is an element of the offense.” **Commonwealth v. Crosby**, 226 A.3d 104, 107 (Pa. Super. 2020), citing **In re J.H.**, 797 A.2d 260, 262 (Pa. Super. 2002). “Rather, the statute seeks to prevent the psychological distress that follows from an invasion of another’s sense of personal security.” **Id.**, citing **Beasley**, 138 A.3d at 46. When determining whether a statement constitutes a terroristic threat, we look at the statement in the context of all surrounding circumstances. **See Demulter**, 314 A.3d at 938.

The trial court acknowledges Conway’s argument that the threats were conditional and, therefore, were not intended to terrorize Joshua, but says the content of the statements and the witnesses’ interpretation of them, in light of the surrounding circumstances, were sufficient to prove both elements of terroristic threats. **See** Trial Court Opinion, 1/8/26, at 4 (unpaginated). We agree.

The Commonwealth clearly presented sufficient evidence to meet both elements of terroristic threats. Conway does not dispute that his statements threatened to commit a violent crime, nor could he, as he repeatedly states his intention to use deadly force. **See** N.T. Trial, 7/30/25, at 104 (no problem “eliminating” a felon); **id.** at 102 (no problem “taking a murder charge to a jury trial”); **id.** at 83–84 (“I will put him down”); **id.** at 111 (implied “he would be judge, jury[,] and executioner if he had to use force again”); Commonwealth Exhibit 1 (there’s a saying, “kill or be killed,” and everyone would “soon see how precious life is” if Joshua were to “act[] on his emotions again”); Commonwealth Exhibit 4 (someone will “permanently put [Joshua]

down"). He also acknowledges his statements were communicated with the intent to terrorize another. **See, e.g.**, Appellant's Brief, at 32 (Conway "made statements which explained what he would do if he were to be attacked by [Joshua] again, which were at wors[t] verbal forewarnings [] intended to notify [Joshua] as to what might happen if he were to strike again"); **id.** at 38 (statements were a "calculated and purposeful response in attempting to dissuade his would[-]be, and very recent, attacker from acting upon him again"). Even if one were to find that Conway did not intend to cause terror, his statements were, at a minimum, made with reckless disregard for the risk of causing terror. Conway communicated numerous threats to three different people, including a law enforcement officer and probation officer, over the course of multiple days. The statements were sufficiently concerning to prompt Officer Hurd to contact Joshua out of fear for his safety. Thus, the trial court did not err in finding the evidence sufficient to support a terroristic threats conviction.

Further, Conway's observation that the statements were conditional does not support his sufficiency claim. As he acknowledges, **In re J.H., supra**, affirmed a conviction for terroristic threats based on conditional statements. **See In re J.H.**, 797 A.2d at 261, 263–64 (juvenile told teacher **if** she spoke to probation officer it would be last thing she ever did; court found evidence sufficient for conviction). **See also Commonwealth v.**

Antonelli, 334 A.3d 358, at *2-*3 (Pa. Super. 2025) (Table)¹¹ (affirming conviction for terroristic threats despite defendant's argument that statements were "transitory and conditional"). Conway proffers no authority to support his argument that the fact that the threats were conditioned on a preceding criminal act prevents those threats from being terroristic under the applicable statute.

Conway correctly observes that this Court has reversed convictions for terroristic threats when the statements were spur-of-the-moment threats made in the heat of an argument. This is appropriate, as the comment to the statute says that "[t]he purpose of the section is to impose criminal liability on persons who make threats which seriously impair personal security or public convenience. It is not intended by this section to penalize mere spur-of-the-moment threats which result from anger." **See** 18 Pa.C.S.A. § 2706 cmt.; **see also Commonwealth v. Tizer**, 684 A.2d 597, 600 (Pa. Super. 1996) (statute not intended to penalize defendants for spur-of-the-moment threats made in anger during dispute). However, Conway does not cite any statute or other authority to support the extension of this well-established principle to the unrelated situation where a defendant acts out of fear, saying only, "Query: Why would not this same statute also be inapplicable to comments that arise out of an individual's genuine contemporaneous fear

¹¹ **See** Pa.R.A.P. 126(b) (non-precedential decisions filed after May 1, 2019, may be cited for persuasive value).

about being assaulted?" **See** Appellant's Brief, at 38 (emphasis removed). There is no reason to believe it would be.

Third, Conway argues that the verdict was against the weight of the evidence. He asserts that, while the fact-finder may infer criminal intent from facts and circumstances established at trial, the jury cannot "guess or surmise at an evil or corrupt motive." Appellant's Brief, at 44. The Commonwealth's witnesses, he claims, ascribed their own meaning to his words, which he says were "[n]early all" "couched as either 'if/then' or 'then/if propositions', which must be considered in the context of multiple oral conversations that he had with other third parties, who he erroneously believed were empathetic to and understanding of his situation[.]" **See id.** The statements were "conditional sentences," which "would not constitute 'a crime of violence' if [] taken in self-defense." **See id.** at 45.

Our standard of review for weight claims is well-settled:

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence[,] do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that[,] notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.

Commonwealth v. Rivera, 238 A.3d 482, 495 (Pa. Super. 2020), quoting **Commonwealth v. Widmer**, 744 A.2d 745, 751-52 (Pa. 2000). The

appellate court does not “reach the underlying question of whether the verdict was, in fact, against the weight of the evidence. Instead, this Court determines whether the trial court abused its discretion in reaching whatever decision it made on the motion.” **Commonwealth v. Williams**, 176 A.3d 298, 312 (Pa. Super. 2017), quoting **Commonwealth v. Ferguson**, 107 A.3d 206, 213 (Pa. Super. 2015) (alterations removed). “One of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.” **Widmer**, 744 A.2d at 753.

In this instance, the trial court reviewed the content of Conway’s statements and determined the evidence was “not so tenuous, vague[,] or uncertain that the verdict shocks the conscience of the [c]ourt.” **See** Opinion and Order, 11/21/25, at 4. Upon review, the trial court did not abuse its discretion in reaching this conclusion.

Conway compares the facts of the instant case to those in **Commonwealth v. Anneski**, 525 A.2d 373 (Pa. Super. 1987), where this Court affirmed the trial court’s reversal of a conviction for terroristic threats on the ground that the verdict was against the weight of the evidence.¹² In **Anneski**, the defendant threatened to shoot the victim if the victim ran into the defendant’s children with her car. The defendant uttered the threat to the

¹² The case was filed as a private criminal complaint. **See id.** at 374.

victim after the victim had hit, with her car, a schoolbag being carried by one of the defendant's children. During the confrontation, both parties were "yelling and screaming," and the victim had just told the defendant that she would run into the defendant's children again if they did not get out of her way. **Id.** at 374, 375. This Court found that

the evidence disclosed[] that [defendant] spoke in anger, during a heated argument, because she believed that her child had been struck by [her neighbor's] automobile, and because she feared for the future safety of her children. . . . [I]t appears that there was an exchange of threats made during a heated, perhaps hysterical, argument between neighbors.

Id. at 376. **Anneski**, however, is not relevant to the instant case. Conway explains the distinction himself: "The only difference between the [a]ppellant in **Anneski** and [] Conway is that [] Conway was acting and commenting not under pure anger, but rather upon genuine unadulterated fear[.]" Appellant's Brief, at 48. The entire point of **Anneski** is that spur-of-the-moment statements made in the heat of the moment are explicitly excepted from the statute. Therefore, Conway's weight claim fails.

Finally, Conway asserts that the trial court erred in failing to grant a new trial based on an alleged **Brady** violation, where the Commonwealth did not produce in pre-trial discovery the audio of a voicemail Conway left for Officer Hurd.¹³ He argues that listening to the voicemail would have allowed the jury

¹³ The existence of the audio recording was revealed during defense counsel's cross-examination of Officer Hurd. **See** N.T. Trial, 7/30/25, at 115-16. Counsel asked whether Officer Hurd preserved the voicemail in his email, and
(Footnote Continued Next Page)

to “make its own independent assessment” of Conway’s tone, as the voicemail “duly highlights precisely how cool, calm, and collected and non-menacing [] Conway was in using his carefully selected chosen words.” Appellant’s Brief, at 51. He also argues that there was

a high degree of certainty that defense counsel’s [t]rial strategy would have been materially different in that he would have caused the audio to be played *verbatim* to the [j]ury as this was the ‘best evidence’ and the only real[-]time example of the non-threatening nature of [] Conway’s verbalized statements and would have bolstered that the true intent of the text messages was to serve as a warning, not a threat.

Id. at 53.

Review of a trial court’s failure to grant a new trial based on a ***Brady*** violation “presents a question of law, for which our standard of review is *de novo* and our scope of review is plenary.” ***Commonwealth v. Bagnall***, 235 A.3d 1075, 1084 (Pa. 2020).

To establish a ***Brady*** violation, the defendant must show that: “(1) the evidence was suppressed by the [s]tate, either willfully or inadvertently; (2) the evidence at issue is favorable to the defendant; and (3) the evidence was material, meaning that prejudice must have ensued.” ***Commonwealth v. Chambers***, 807 A.2d 872, 887 (Pa. 2002). The defendant has the burden to demonstrate that the evidence was withheld or suppressed. ***See***

Officer Hurd answered in the affirmative and offered to pull it up on his phone in open court. ***See id.*** at 116. Defense counsel did not inquire further at the time, ***see id.***, but later explained in both his post-sentence motion and appellate brief that he moved on because he did not know what was in the voicemail and did not want to hear it for the first time at the same time as the jury. ***See*** Post-Sentence Motion, 9/5/25, at ¶ 27; Appellant Brief, at 24.

Commonwealth v. Roney, 79 A.3d 595, 608 (Pa. 2013). “Exculpatory evidence is that which extrinsically tends to establish [the] defendant’s innocence of the crimes charged.” **Commonwealth v. Lambert**, 765 A.2d 306, 325 n.15 (Pa. Super. 2000). Evidence is only material under **Brady**, and, thus, justifies setting aside a conviction where it has not been disclosed, if there exists a reasonable probability that, had the evidence been disclosed, the result at trial would have been different.

[T]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial[,] does not establish materiality in the constitutional sense. In determining whether a reasonable probability of a different outcome has been established, the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether[,] in its absence[,] he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. Thus, a reasonable probability of a different result is established when the government’s suppression of evidence undermines confidence in the outcome of the trial. Importantly, in order to be entitled to a new trial for failure to disclose evidence affecting a witness’ credibility, the defendant must demonstrate that the reliability of the witness may well be determinative of his guilt or innocence. In engaging in this analysis, a reviewing court is not to review the undisclosed evidence in isolation, but, rather, the omission is to be evaluated in the context of the entire record.

See Commonwealth v. Dennis, 17 A.3d 297, 308-09 (Pa. 2011) (internal quotation marks and citations omitted). To assert a **Brady** claim, the defendant need not establish that the prosecution suppressed the evidence willfully:

[T]he good faith, or lack thereof, by the prosecutor is not determinative because the concern is not punishment of society for misdeeds of the prosecutor, but avoidance of an unfair trial to

the accused—it is the effect on the right to a fair trial, not the prosecutor’s state of mind, that constitutes reversible error.

Bagnall, 235 A.3d at 1090, quoting **Commonwealth v. Wallace**, 455 A.2d 1187, 1190 (Pa. 1983) (quotation marks omitted).

The trial court notes that the Commonwealth admitted that the evidence was not turned over during pre-trial discovery, so the only questions were whether the voicemail was favorable to Conway, either because it was exculpatory or impeachment material, and whether Conway was prejudiced by the failure to disclose the voicemail before trial. **See** Order and Opinion, 11/21/25, at 6–7. After listening to the voicemail, the trial court determined it was neither exculpatory nor impeachment material, and there was no reasonable probability that pre-trial disclosure would have affected the trial’s outcome. **See id.** at 7. Conway’s statement about being the judge, jury, and executioner was referenced in the affidavit of probable cause attached to the criminal complaint and testified to by Officer Hurd, and the Commonwealth used that statement in support of its terroristic threats charge. **See id.** The court further found that hearing the tone of Conway’s voice on the voicemail would not have changed the content of the statement, and the jury heard Conway’s testimony that the statement was not made in a threatening manner, needed to be considered in context, and was conditional. **See id.**

We agree with the trial court’s assessment. Conway does not explain how the disclosure of the voicemail would have changed his trial strategy, apart from the fact that he would have played it. **See** Appellant’s Brief, at 53. The trial court did not abuse its discretion in finding that the content of the

voicemail did not differ substantially from the other statements the Commonwealth presented at trial, as many of them threatened the use of deadly force if Joshua attacked Conway again. **See, e.g.**, Commonwealth Exhibits 1, 2, 4; N.T. Trial, 7/30/25, at 83–84. One more threat of deadly force was unlikely to change the outcome; if anything, it may have made conviction more likely. Furthermore, the trial court heard the voicemail and therefore had the opportunity to assess its tone, and it did not find it exculpatory. **See** Opinion and Order, 11/21/25, at 7.

For the foregoing reasons, we reject all of Conway’s claims. However, we observe that the record is ambiguous as to whether Conway was present at the October 29, 2025 hearing on his post-sentence motion at which his sentence was amended. The record contains two orders directing the superintendent of the state correctional institution at which Conway was confined (SCI Rockview) to ensure Conway appeared at the hearing. **See** Order, 10/23/25; Order, 10/27/25. However, the notes of testimony from that hearing do not reflect that Conway appeared. **See generally** N.T. Post-Sentence Motions Hearing, 10/29/25.

The amendment to the sentence was not correcting a mere clerical error, because failure to properly award time served implicates the legality of the sentence. **See, e.g., Commonwealth v. Gibbs**, 181 A.3d 1165, 1166 (Pa. Super. 2018). Thus, if Conway was not present for the resentencing, the amended sentence would also be illegal. **See** Pa.R.Crim.P. 602 (“The defendant shall be present at every stage of the trial[,] including [] the

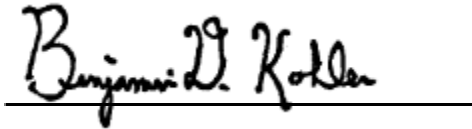
imposition of sentence.”); **Commonwealth v. Mumford**, 353 A.3d 247, 262 (Pa. Super. 2026) (concluding, in case where initial sentencing order did not provide for re-entry supervision as mandated by 61 Pa.C.S.A. § 6137.2 and was therefore an illegal sentence, and there was no indication in record that trial court conducted resentencing hearing or defendant was present when amended sentence was imposed, amended sentence was illegal); **see also, e.g., Commonwealth v. Norris**, 307 A.3d 633, at *7 (Pa. Super. 2023) (Table) (finding resentencing to include re-entry supervision imposed illegal sentence, because trial court was not merely correcting clear clerical error, and defendant was not present at time of imposition of resentence), citing **Commonwealth v. Johnson**, 297 A.3d 719 (Pa. Super. 2023) (Table).¹⁴

Thus, we affirm Conway’s conviction but vacate his sentence and remand to the sentencing court to determine whether Conway was present at the post-sentence motion hearing. If, on remand, it is determined that he was present, the court is to reinstate the amended sentencing order. If he was not, the court is to hold a hearing to resentence Conway in his presence.

¹⁴ “The legality of a criminal sentence is non-waivable, and this Court may raise and review an illegal sentence *sua sponte*.” **Mumford**, 353 A.3d at 261, quoting **Commonwealth v. Derrickson**, 242 A.3d 667, 673 (Pa. Super. 2020).

Conviction affirmed. Judgment of sentence vacated. Case remanded for further proceedings consistent with this memorandum. 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: 10/23/2026