



## **Statement of the facts**

**{¶ 2}** On September 8, 2019, officer Byron Foxx (“Foxx”) of the Garfield Hts. Police Department was dispatched to Rockside Rd. to respond to a road-rage incident. Upon arriving, Foxx spotted a male with a torn shirt — Salvatore. Foxx spoke with Salvatore, who confirmed that he had been in a fight with a man named Julius Small (“Small”). The two drivers had apparently been repeatedly cutting each other off as they drove on Interstate 271. They both exited the highway at Rockside Rd. and, at a stop light, Small got out of his car and opened Salvatore’s driver side door. The two began fighting and swearing at each other. Both Salvatore and Small would ultimately be charged; Salvatore was charged with one count of disorderly conduct, a minor misdemeanor, in violation of 509.03 of the Codified Ordinances of Garfield Hts.

**{¶ 3}** The matter proceeded to the Garfield Hts. Municipal Court where Salvatore entered a plea of not guilty on September 12, 2019.

**{¶ 4}** On October 18, 2019, Salvatore appeared before the court for a bench trial. Relying primarily on Foxx’s testimony and Salvatore’s own statements at the scene, the court found Salvatore guilty. The court proceeded immediately to sentencing and sentenced Salvatore by imposing a fine of \$75 dollars.

**{¶ 5}** Salvatore also incurred court costs that, in addition to his fine, totaled \$236 dollars. On October 18, 2019, Salvatore paid the fine and his court costs.

{¶ 6} Salvatore did not file a stay of execution either with the municipal court or with this court. He filed a notice of appeal on November 15, 2019, and submits three assignments of error for our review.

Assignment of Error No. 1

The trial court abused its discretion in admitting statements from an individual who was not subject to cross-examination in violation of appellant's rights protected under the United States and Ohio Constitutions.

Assignment of Error No. 2

Appellant's conviction was against the manifest weight of the evidence.

Assignment of Error No. 3

The state failed to present sufficient evidence to prove each and every element of the offense beyond a reasonable doubt.

{¶ 7} Although Salvatore presents three assignments of error, this court will not address them because the record reflects that this appeal is moot.

{¶ 8} Generally,

[w]here a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction.

*Middleburg Hts. v. McClellan*, 8th Dist. Cuyahoga No. 103212, 2016-Ohio-816, ¶ 7, citing *State v. Montavon*, 10th Dist. Franklin No. 12AP-631, 2013-Ohio-2009, ¶ 6, quoting *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236 (1975), syllabus; see also *Lakewood v. Scilimenti*, 8th Dist. Cuyahoga No. 101931, 2015-Ohio-1842, ¶ 6.

{¶ 9} To determine whether an appeal is moot as a result of the sentence having been voluntarily completed, courts should consider whether the defendant (1) contested the charges at trial; (2) sought a stay of execution of sentence for the purpose of preventing an intended appeal from being declared moot; and (3) appealed the conviction. *State v. Hoopes*, 8th Dist. Cuyahoga No. 107794, 2019-Ohio-1535, ¶ 5, citing *Cleveland Hts. v. Lewis*, 129 Ohio St.3d 389, 2011-Ohio-2673, 953 N.E.2d 278, ¶ 22-25.

{¶ 10} In this case, Salvatore did not seek a stay of execution of his sentence. He voluntarily completed his sentence by paying his fines and court costs on the day he was sentenced. That he contested the charges at trial and is appealing his conviction is not sufficient under *Lewis*.

{¶ 11} Further, he has not presented any argument that he has suffered or will suffer any collateral disability as the result of his conviction or that he involuntarily paid the fine and costs. *See, e.g., McClellan*, 8th Dist. Cuyahoga No. 103212, 2016-Ohio-816, ¶ 9; *State v. Price*, 8th Dist. Cuyahoga No. 107227, 2019-Ohio-705.

{¶ 12} Based on the foregoing, this court finds that Salvatore's appeal is moot.

{¶ 13} Appeal is dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

It is ordered that a special mandate issue of this court directing the Garfield Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27  
of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, JUDGE

EILEEN T. GALLAGHER, A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR