

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 24AP-715
	:	(C.P.C. No. 22CR-5627)
v.	:	
	:	(REGULAR CALENDAR)
Jeremiah D. Johnson,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 20, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and *Marita I. Ramirez* for appellee. **Argued:** *Marita I. Ramirez*.

On brief: *Todd W. Barstow* for appellant. **Argued:** *Todd W. Barstow*.

APPEAL from the Franklin County Court of Common Pleas

EDELSTEIN, J.

{¶ 1} Defendant-appellant, Jeremiah D. Johnson, appeals from the November 4, 2024 judgment of conviction entered by the Franklin County Court of Common Pleas after a jury found him guilty of felonious assault with a firearm specification. On appeal, Mr. Johnson argues his conviction is against the manifest weight of the evidence. For the following reasons, we disagree and affirm the judgment below.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} This case stems from the nonfatal shooting of U.H. following his 13-year-old son's football practice on the evening of October 18, 2022 in the parking lot of Rhodes Park, located in Franklin County, Ohio. Plaintiff-appellee, the State of Ohio, alleged the football coach, Mr. Johnson, shot U.H. in his right hip after a verbal and physical altercation

between the two men ended. After the shooting, U.H. drove to a nearby fire station for medical treatment and was ultimately transported to a hospital for more comprehensive care. Officers from the Columbus Police Department (“CPD”) were dispatched to the fire station and, after speaking with U.H. about the altercation, proceeded to Rhodes Park to interview witnesses, take photographs, and collect evidence. Ultimately, as described more below, Mr. Johnson was identified as the shooter.

{¶ 3} On November 30, 2022, a Franklin County Grand Jury indicted Mr. Johnson with one count of felonious assault, in violation of R.C. 2903.11(A), a felony of the second degree with a three-year firearm specification. After the trial court permitted him to withdraw his February 5, 2024 plea of guilty, Mr. Johnson filed a notice of self-defense on October 20, 2024.

{¶ 4} A three-day jury trial commenced on October 28, 2024. At trial, as relevant to the facts of this appeal, the state presented the testimony of U.H., two eyewitnesses, Officer Levi Dotson, and Detective Andrew Howe. Mr. Johnson testified in his own defense. Following the presentation of evidence, the jury found Mr. Johnson guilty of felonious assault with the accompanying firearm specification.

{¶ 5} The matter proceeded to sentencing on October 31, 2024, where the trial court imposed an indefinite aggregate prison sentence of six to seven and one-half years. The trial court memorialized Mr. Johnson’s conviction and sentence in its November 4, 2024 judgment entry. Mr. Johnson now appeals from that judgment and raises the following sole assignment of error for our review:

THE JURY’S VERDICT OF GUILTY AS TO FELONIOUS
ASSAULT WAS AGAINST THE MANIFEST WEIGHT OF
THE EVIDENCE AS THE STATE FAILED TO PROVE
BEYOND A REASONABLE DOUBT THAT [MR. JOHNSON]
WAS NOT ACTING IN SELF-DEFENSE.

II. ANALYSIS

{¶ 6} In his sole assignment of error, Mr. Johnson contends his conviction for felonious assault with a three-year firearm specification is against the manifest weight of the evidence. For the following reasons, we disagree.

A. Legal Standard and Standard of Review

{¶ 7} A manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion. *See, e.g., State v. Richey,*

2018-Ohio-3498, ¶ 50 (10th Dist.), citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 11-13, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386-87 (1997). “ ‘[W]eight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other.’ ” *State v. Petty*, 2017-Ohio-1062, ¶ 60 (10th Dist.), quoting *State v. Boone*, 2015-Ohio-2648, ¶ 49 (10th Dist.), citing *Thompkins* at 387.

{¶ 8} When considering an appellant’s claim that a conviction is against the manifest weight of the evidence, this court sits as a “thirteenth juror” and may disagree “with the factfinder’s resolution of the conflicting testimony.” *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). *See also State v. Martin*, 2022-Ohio-4175, ¶ 26. In making this determination, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the witnesses’ credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *See, e.g., Sparre v. Ohio Dept. of Transp.*, 2013-Ohio-4153, ¶ 10 (10th Dist.); *Eastley* at ¶ 20; *Thompkins* at 387; *Martin* at ¶ 26.

{¶ 9} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding credibility of witnesses and the weight of testimony are primarily for the trier of fact. *See, e.g., State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus; *Morris v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-3803, ¶ 64 (10th Dist.), citing *Watson v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-1017, ¶ 31 (10th Dist.), citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). The trier of fact is best able “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co., Inc.* at 80.

{¶ 10} To reverse a jury verdict as being against the manifest weight of the evidence, a unanimous concurrence of all three judges on the court of appeals panel reviewing the case is required pursuant to Article IV, Section 3(B)(3) of the Ohio Constitution. *Bryan-Wollman v. Domonko*, 2007-Ohio-4918, ¶ 2-4, citing *Thompkins* at paragraph four of the syllabus.

B. Legal Analysis

{¶ 11} Mr. Johnson was convicted of felonious assault in violation of R.C. 2903.11(A) with a three-year firearm specification. At trial, the jury was instructed on the

two alternative ways in which the offense of felonious assault could be committed, as relevant here. First, as specified in R.C. 2903.11(A)(1), a person commits felonious assault by knowingly causing “serious physical harm to another.” “Serious physical harm to persons” is defined in R.C. 2901.01(A)(5) to mean any of the following:

- (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (b) Any physical harm that carries a substantial risk of death;
- (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

Alternatively, under R.C. 2903.11(A)(2), a person commits felonious assault by knowingly causing or attempting to cause physical harm to another “by means of a deadly weapon or dangerous ordnance,” here, a firearm. “Physical harm to persons” is defined in R.C. 2901.01(A)(3) as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.”

{¶ 12} To prove felonious assault under R.C. 2903.11(A), the state was required to prove Mr. Johnson acted “knowingly.” “Knowingly” is defined by statute as follows:

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

R.C. 2901.22(B).

{¶ 13} In this case, U.H. testified he approached Mr. Johnson on the evening of October 18, 2022 after his son’s football practice ended to resolve a misunderstanding that took place at his son’s birthday party a few days earlier. (Oct. 29, 2024 Tr. Vol. II at 182-89, 224-32, 235-36.) At all relevant times, Mr. Johnson was a coach for the Hilltop Cowboys Athletic Association (a member of the Westside’s Karl J. Fulton football league) (“Hilltop Cowboys”) and U.H.’s son, D.H., played on the team coached by Mr. Johnson.

{¶ 14} U.H. testified he was upset about Mr. Johnson accusing him of making a pass at his girlfriend, who is a close friend of U.H.’s family. (Tr. Vol. II at 176-82, 306-13.) U.H.’s conversation with Mr. Johnson on October 18, 2022 quickly turned hostile, with the two men yelling at each other and then engaging in a physical fight. (Tr. Vol. II at 190-91, 314.) According to U.H., Mr. Johnson grabbed his legs, U.H. threw a punch, and the two men were “wrestling” and “tussling” when a third unidentified man joined the fight to assist Mr. Johnson. (Tr. Vol. II at 191-99.) Mr. Johnson testified he did not know the identity of the person who assisted him “because he did have a [ski] mask on,” but speculated he may have been a “team parent or somebody else.” (Tr. Vol. II at 319, 327-28.)

{¶ 15} U.H. described being punched in the face and kicked multiple times by Mr. Johnson and the unidentified man to the point of exhaustion. (See Tr. Vol. II at 191-99.) Photographs of U.H.’s injuries showed significant swelling and discoloration to his face, along with a laceration to his left temple. (Tr. Vol. II at 216-18; State’s Ex. C-17 to C-20.) After another parent intervened and the fight reached its conclusion, the uncontroverted evidence established Mr. Johnson ran over to his car, retrieved a gun, and shot U.H. in the right hip. (Tr. Vol. II at 194-99, 319-24, 330-31.) It was also undisputed that U.H. was not armed, did not have a gun in his car, and had not said anything to anyone about having a gun before he was shot. (Tr. Vol. II at 199-200, 261, 329-30.) After the shooting, Mr. Johnson and the other man fled the scene in Mr. Johnson’s car. (See Tr. Vol. II at 149, 244-45, 261-64, 274.) U.H. drove himself to the nearby fire station for medical treatment, at which time the police were called and he was transported to the hospital. (See Tr. Vol. II at 148-49, 265, 241.)

{¶ 16} U.H.’s account was supported by the testimony of two eyewitnesses: George Payne, incorporator of the Hilltop Cowboys, and David Halley, the association’s athletic director. Mr. Payne did not hear what Mr. Johnson and U.H. were arguing about or see their physical altercation. Mr. Payne testified parents alerted him to the fight while he was

on his way out of the park. (Tr. Vol. II at 146.) Mr. Payne turned his vehicle around and drove back to the scene, where he saw two men standing over another man on the ground. (Tr. Vol. II at 146-50.) Mr. Payne testified that one of the men who was standing walked over to a car, accessed its inside compartment, and walked back toward the man on the ground. (Tr. Vol. II at 146-50.) After hearing a gunshot, Mr. Payne asked Mr. Halley to call the police and waited at the scene for law enforcement to arrive. (Tr. Vol. II at 146-50, 154.)

{¶ 17} Mr. Halley described coming to the scene from another field when a child alerted him to the fight. (Tr. Vol. II at 252-53.) On arrival, he saw U.H. “pretty much getting beat up pretty bad,” with two men attacking U.H. while he was on the ground. (Tr. Vol. II at 255, 206.) After some parents assisted with breaking the fight up and the men were separated, Mr. Halley saw one of the two standing men walk over to a car and walked back towards U.H., who was either still on the ground or attempting to stand up. (See Tr. Vol. II at 259-61.) Mr. Halley then “hear[d] a gunshot and [saw] a muzzle flash” while he was in the midst of trying to clear children from the area. (Tr. Vol. II at 255-59.) Mr. Halley opined U.H. did nothing to pose any sort of threat to Mr. Johnson or the other man after the fight concluded before he was shot. (Tr. Vol. II at 260-61.) The two men fled the scene in a vehicle, but Mr. Halley was able to get its license plate number, make, and model. (Tr. Vol. II at 261-64.) He also waited at the scene and spoke with police later that evening. (Tr. Vol. II at 252.)

{¶ 18} Officer Dotson testified he first encountered U.H. when he was dispatched to a fire station on the evening of October 18, 2022 on a shooting report. (Tr. Vol. II at 240-42.) After confirming no firearms were inside of U.H.’s vehicle and securing the vehicle at the scene, Officer Dotson spoke with U.H. and D.H. about the shooting and relayed that information to detectives. (See Tr. Vol. II at 244-47.) Due to the severity of his injuries, U.H. was transported to the hospital for additional medical treatment. (See Tr. Vol. II at 201-18, 271.)

{¶ 19} Detective Andrew Howe arrived at the fire station after U.H.’s transport. (Tr. Vol. II at 271.) On arrival, he spoke with D.H. and ensured photographs of U.H.’s vehicle were taken. (See Tr. Vol. II at 271-74.) Detective Howe and other officers then responded to Rhodes Park to secure the scene, speak with eyewitnesses, and collect evidence. (Tr. Vol. II at 274-81, 289-90.) Officers were unable to recover any spent shell casings from the scene. (Tr. Vol. II at 279-80.) Nonetheless, the statements obtained from D.H. and the two

eyewitnesses “were pretty much the same story, pretty well corroborated” in describing the October 18, 2022 shooting at the park. (*See* Tr. Vol. II at 279-80.)

{¶ 20} At the time of the shooting, U.H. only knew Mr. Johnson as “Coach Jaybo,” who he later identified in the courtroom as Mr. Johnson. (Tr. Vol. II at 174-75, 293.) Thus, additional investigation was necessary to develop the shooter’s identity. After U.H. provided Detective Howe with a Facebook profile link of the man who shot him, a CPD criminal intelligence analysis identified the person associated with that profile as Mr. Johnson. (Tr. Vol. II at 281-82, 287-88.) To verify the identification, Detective Howe used a photo identification lineup system to generate a photo array with Mr. Johnson’s photograph and those of other men with similar physical attributes. (*See* Tr. Vol. II at 282-83, 287-88.) The parties stipulated that U.H. identified Mr. Johnson’s photograph in the array as the person who shot him. (Tr. Vol. II at 303.)

{¶ 21} Mr. Johnson testified in his own defense. Mr. Johnson claimed U.H. parked his vehicle right behind Mr. Johnson’s car to block Mr. Johnson from leaving the October 18, 2022 football practice. (Tr. Vol. II at 316-17.) According to Mr. Johnson, U.H. then exited his vehicle and approached him “kind of aggressive,” “called [him] a ‘B’ word,” and tried to fight him. (Tr. Vol. II at 317-18.) While U.H. testified Mr. Johnson initiated the physical altercation by grabbing his legs (Tr. Vol. II at 190-91), Mr. Johnson claimed U.H. swung at him first. (Tr. Vol. II at 318-19.) Mr. Johnson testified that he ducked U.H.’s punch, “picked [U.H.] up and slammed him on the ground and the altercation happened from there.” (Tr. Vol. II at 318-19.) At some point, a third man got involved in the altercation; Mr. Johnson believed this man initially attempted to calm the situation before he ultimately joined Mr. Johnson in attacking U.H. (*See* Tr. Vol. II at 319-20.) On cross-examination, Mr. Johnson admitted to beating U.H. down “pretty comprehensively” and winning the fight. (Tr. Vol. II at 330.)

{¶ 22} Mr. Johnson acknowledged that a woman stopped the fight, at which time he walked over to his car to retrieve a firearm “for safety.” (Tr. Vol. II at 320-22.) Contrary to the testimony otherwise, Mr. Johnson claimed he heard U.H. “stating that he had something for me, he’s about to go back to his car, stay there and watch his” while U.H. was attempting to get up from the ground. (Tr. Vol. II at 321.) Mr. Johnson explained he was in “fear” of the situation given that he “was already blocked in by [U.H.] and there’s kids in my car” and did not want to “take the chance of him going to his car, retrieving a weapon

and shooting at me or the kid in my car.” (Tr. Vol. II at 321-22. *See also* Tr. Vol. II at 325-26.) Thus, rather than “letting [U.H.] get any further towards his car to see if he did [have] a weapon or not,” Mr. Johnson “just decided to fire one round in his leg,” believing he “was protecting [him]self and those kids.” (Tr. Vol. II at 322.) Mr. Johnson acknowledged he never saw U.H. with a firearm and the other man involved in the altercation, despite being armed, did not fire his gun. (Tr. Vol. II at 329-30.) Mr. Johnson also admitted U.H. never said that the “something” he allegedly “had . . . for” Mr. Johnson was a gun. (Tr. Vol. II at 330.)

{¶ 23} Mr. Johnson claimed that leaving the scene after the fistfight ended—i.e., before the shooting—was not an option because his vehicle was blocked in. (Tr. Vol. II at 322-23.) U.H. testified, however, that he parked two spots to the right of Mr. Johnson’s car when he arrived to pick his son up from practice and got out to speak with Mr. Johnson. (*See* Tr. Vol. II at 185-86.) Further, Mr. Halley recounted seeing Mr. Johnson’s vehicle back out and speed away immediately after the shooting, which belies Mr. Johnson’s claim that he was unable to back out just moments before he shot U.H. (*See* Tr. Vol. II at 262-64.) After fleeing the scene, Mr. Johnson admitted he did not call anyone to report the incident. (Tr. Vol. II at 323-24, 331-30.)

{¶ 24} On appeal, Mr. Johnson does not claim the state failed to meet its burden in proving he knowingly shot U.H. in the park on October 18, 2022. Instead, he contends the state failed to disprove his self-defense claim beyond a reasonable doubt, thus rendering his felonious assault conviction against the manifest weight of the evidence. For the following reasons, we disagree.

{¶ 25} Self-defense is a common-law defense to a criminal act. As codified in R.C. 2901.05(B)(1), “[a] defendant is entitled to a self-defense jury instruction when he presents legally sufficient evidence for every element of a self-defense claim.” *State v. Palmer*, 2024-Ohio-539, ¶ 1. “This burden of production is de minimis and can be satisfied with the state’s own evidence.” *Id.* Once this burden is satisfied, the state’s burden of persuasion is triggered. *Id.* at ¶ 19, citing *State v. Messenger*, 2022-Ohio-4562, ¶ 19, 25. To satisfy this burden, the state must prove beyond a reasonable doubt that the defendant did not use the force in self-defense. R.C. 2901.05(B)(1). The state’s “burden of disproving the defendant’s self-defense claim beyond a reasonable doubt is subject to a manifest-weight review on appeal.” *Messenger* at ¶ 27.

{¶ 26} Self-defense is a common-law defense that has not been codified by statute in Ohio. So, unlike in most states, its elements are generally derived from the common law.¹ The elements of a self-defense claim differ depending on whether deadly or non-deadly force was used. *See, e.g., State v. Stevenson*, 2018-Ohio-5140, ¶ 33 (10th Dist.). In this case, Mr. Johnson shot the victim in the right hip. It is well-established that the use of a gun constitutes deadly force. *See, e.g., State v. Marshall*, 61 Ohio App.2d 84, 86 (10th Dist. 1978); R.C. 2901.01(A)(2) (defining “[d]eadly force” as “any force that carries a substantial risk that it will proximately result in the death of any person”).

{¶ 27} When deadly force is used, the state must disprove beyond a reasonable doubt at least one of the following elements of a self-defense claim: (1) the defendant was not at fault in creating the situation giving rise to the affray; (2) the defendant had a bona fide belief that he was in imminent danger of death or great bodily harm and his only means of escape from such danger was the use of such force; and (3) the defendant did not violate any duty to retreat or to avoid the danger.² *See Messenger* at ¶ 14, citing *State v. Barnes*, 94 Ohio St.3d 21, 24 (2002); *State v. Melchior*, 56 Ohio St.2d 15, 20-21 (1978); *State v. Robbins*, 58 Ohio St.2d 74 (1979), paragraph two of the syllabus. Thus, when evidence

¹ Given the confusion surrounding jury instructions on self-defense in criminal trials, it might be prudent for Ohio’s General Assembly to consider enacting, as almost all other states have done, a comprehensive statutory framework regarding the use of deadly and non-deadly force as an affirmative defense in a criminal prosecution. *See, e.g.,* Ala.Code § 13A-3-23; Alaska Stat. §§ 11.81.330 through 11.81.430; Ariz.Rev.Stat. Ann. §§ 13-403 through 13-411; Ark.Code Ann. §§ 5-2-605 through 5-2-620; Cal.Penal Code §§ 195 through 199; Colo.Rev.Stat. §§ 18-1-703 through 18-1-707; Conn.Gen.Stat. Ann. §§ 53a-18 through 53a-23; Del.Code Ann., Title 11, §§ 464 through 471; Fla.Stat. §§ 776.012 through 776.07; Ga.Code Ann. §§ 16-3-21 through 16-3-24; Hawaii Rev. Stat. §§ 703-304 through 703-310; Idaho Code §§ 18-4009 and 19-202A; 720 Ill.Comp.Stat. 5/7-1 through 5/7-9; Ind.Code §§ 35-41-3-2 and 35-41-3-3; Iowa Code §§ 704.1 through 704.13; Kan.Stat. Ann. §§ 21-5220 through 21-5231; Ky.Rev.Stat. Ann. §§ 503.050 through 503.120; La.Rev.Stat. Ann. §§ 14:19 through 14:22; Me.Rev.Stat., Title 17, §§ 101 through 108; Mich.Comp. Laws §§ 780.961 through 780.974; Minn.Stat. §§ 609.06 through 609.066; Miss.Code Ann. § 97-3-15; Mo.Rev.Stat. §§ 563.031 through 563.061; Mont.Code Ann. §§ 45-3-101 through 45-3-116; Neb. Rev. Stat. §§ 28-1409 through 28-1414; Nev.Rev.Stat. §§ 200.120 through 200.200, 200.275; N.H.Rev.Stat. Ann. §§ 627:3 through 627:9; N.J.Rev.Stat. §§ 2C:3-4 through 2C:3-11; N.M.Stat. Ann. §§ 30-2-7 through 30-2-8; N.Y.Penal Law §§ 35.10 through 35.30; N.C.Gen.Stat. §§ 14-51.2 and 14-51.3; N.D.Cent. Code §§ 12.1-05-03 through 12.1-05-07.1, 12.1-05-12; Okla.Stat., Title 21, §§ 643, 731-733, 1289.25; Or.Rev.Stat. §§ 161.205 through 161.267; 18 Pa.Cons.Stat. §§ 505 through 509; R.I.Gen. Laws § 11-8-8; S.C.Code Ann. §§ 16-11-420 through 16-11-450; S.D. Codified Laws §§ 22-18-4 through 22-18-6; Tenn.Code Ann. §§ 39-11-611 through 39-11-622; Tex.Penal Code Ann. §§ 9.31 through 9.34; Utah Code §§ 76-2-402 through 76-2-409; Vt.Stat. Ann., Title 13, §§ 2305 and 1024(d); Wash.Rev.Code §§ 9A.16.020 through 9A.16.050; Wis.Stat. §§ 939.48 and 939.49; Wyo.Stat. Ann. §§ 6-2-601 and 6-2-602.

² The third element of a common law self-defense claim has been considerably modified by the General Assembly’s amendment to R.C. 2901.09 (effective April 6, 2021)—commonly referred to as the “stand-your-ground” law—in that a person no longer has a duty to retreat from any place they are lawfully entitled to be. *See* 2020 Am.S.B. No. 175.

presented at trial suggests the defendant used force against another in self-defense, the state must disprove at least one of the elements of self-defense beyond a reasonable doubt before a jury can find the defendant guilty of the criminal offense subject to the self-defense claim. *See, e.g., State v. Carney*, 2020-Ohio-2691, ¶ 31 (10th Dist.); *State v. Huish*, 2023-Ohio-365, ¶ 49-50 (10th Dist.).

{¶ 28} Here, we are not persuaded by Mr. Johnson’s contention that the jury’s determination with respect to self-defense was against the manifest weight of the evidence. Rather, on review, the evidence in the record before us supports the jury being able to find the state satisfied its burden in disproving—at a minimum—the second element of a self-defense claim and convicting Mr. Johnson of felonious assault.

{¶ 29} The “second element of self-defense is a combined subjective and objective test.” *State v. Thomas*, 77 Ohio St.3d 323, 330 (1997). This element considers the “bona fides of defendant’s belief, and reasonableness therefor, and whether, under the circumstances, he exercised a careful and proper use of his own faculties.” *State v. Sheets*, 115 Ohio St. 308, 310 (1926). To make this assessment, the finder of fact must consider the defendant’s situation objectively—that is, whether, considering all of the defendant’s particular characteristics, knowledge (or lack of knowledge), circumstances, history, and conditions at the time of the attack, he **reasonably believed** he was in imminent danger. *Palmer*, 2024-Ohio-539, at ¶ 25, citing *Thomas* at 330. *See also State v. Keith*, 2008-Ohio-6122, ¶ 23 (10th Dist.). Then, if the objective standard is met, the jury must determine if, subjectively, this particular defendant had an **honest belief** that he was in imminent danger necessitating the use of deadly force to defend himself. *See Thomas* at 331. *See also Marts v. State*, 26 Ohio St. 162 (1875), paragraph two of the syllabus (“Homicide is justifiable on the ground of self-defense, where the slayer, in the careful and proper use of his faculties, **bona fide believes**, and has reasonable ground to believe, that he is in imminent danger of death or great bodily harm, and that his only means of escape from such danger will be by taking the life of his assailant, although **in fact** he is mistaken as to the existence or imminence of the danger.”). (Emphasis sic and added.)

{¶ 30} “A defendant is privileged to use only that force that is reasonably necessary to repel the attack.” *State v. Hendrickson*, 2009-Ohio-4416, ¶ 23 (4th Dist.), citing *State v. Williford*, 49 Ohio St.3d 247, 249 (1990). Implicit in the second element of a self-defense claim “is the requirement that the degree of force used was ‘warranted’ under the

circumstances and ‘proportionate’ to the perceived threat.” *Hendrickson* at ¶ 31, citing *State v. Palmer*, 80 Ohio St.3d 543, 564 (1997) and *State v. Cassano*, 2002-Ohio-3751. In considering a self-defense claim involving the firing of a gun during a fistfight, this court has recognized that “ ‘[a]lthough the law does not quantify specifically the amount of force a defendant is entitled to use in self-defense, the jury in weighing the credibility of the various witnesses reasonably could conclude defendant was the only one firing a gun and in effect escalated a fist fight into a shoot out.’ ” *State v. Lee*, 2024-Ohio-4498, ¶ 19 (10th Dist.), quoting *State v. Kendricks*, 2010-Ohio-6041, ¶ 41 (10th Dist.). See also *State v. Hare*, 2023-Ohio-1623, ¶ 23 (11th Dist.) (holding the “brawl” in that case “was essentially a fist fight that did not warrant the use of deadly force”); *State v. Campbell*, 2008-Ohio-4831, ¶ 26-27 (10th Dist.) (finding defendant did not act in self-defense where, after becoming involved in a fight with people at a party, defendant ran to a van, retrieved his gun, and started firing shots, thus escalating the confrontation); *State v. Ferrell*, 2020-Ohio-6879, ¶ 30 (10th Dist.) (observing defendant’s decision to brandish a firearm during a physical altercation was an escalation).

{¶ 31} Even assuming U.H. was at fault in creating the situation giving rise the affray—a **non-deadly** verbal confrontation that escalated to a **non-deadly** fistfight—and Mr. Johnson was privileged to act in self-defense, the undisputed evidence showed the altercation was over when Mr. Johnson and the unidentified man were separated from U.H. after he had been beaten and was on the ground. The jury could have reasonably concluded Mr. Johnson exceeded the force he was entitled to use by escalating the situation **after the confrontation ended** by retrieving a gun from his car and shooting U.H. in the hip, an unequivocal act of **deadly** force. No evidence in the record before us suggests U.H. had a firearm on his person or otherwise threatened to use deadly force against Mr. Johnson before Mr. Johnson retrieved his firearm from his vehicle and shot U.H. Ohio law does not permit the use of deadly force to protect against an unsubstantiated, hypothetical possibility of harm. Yet, here, Mr. Johnson testified his decision to shoot U.H. was based on the speculative “chance” U.H. might have a firearm in his car, get up from the ground, walk over to retrieve it, and shoot him. (See, e.g., Tr. Vol. II at 321.) As Mr. Johnson, himself, explained, “instead of, like, letting [U.H.] get any further towards his car to see if he did [have] a weapon or not,” he “just decided to fire one round in [U.H.’s] leg.” (Tr. Vol.

II at 322.) Mr. Johnson does not cite any legal authority to suggest that his speculative concern for potential harm satisfies the second element of a self-defense claim.

{¶ 32} Finally, we recognize U.H. initially gave an account of events to officers at the hospital on October 18, 2022 that differed from the version he described in his October 23, 2022 interview with Detective Howe, the latter being consistent with the testimony he provided at trial. (See Tr. Vol. II at 218-20, 231-32, 284-85.) And we acknowledge the discrepancies between Mr. Johnson’s testimony, the eyewitnesses’ testimony, and U.H.’s testimony about what occurred on the night of October 18, 2022. It is well established that the finder of fact “may consider conflicting testimony from a witness in determining credibility and the persuasiveness of the account by either discounting or otherwise resolving the discrepancies.” *State v. Harris*, 2023-Ohio-3994, ¶ 41 (10th Dist.), citing *State v. Taylor*, 2015-Ohio-2490, ¶ 34 (10th Dist.), citing *Midstate Educators Credit Union, Inc. v. Werner*, 2008-Ohio-641, ¶ 28 (10th Dist.). “ ‘The finder of fact can accept all, part or none of the testimony offered by a witness, whether it is expert opinion or eyewitness fact, and whether it is merely evidential or tends to prove the ultimate fact.’ ” *Petty*, 2017-Ohio-1062, at ¶ 63 (10th Dist.), quoting *State v. Mullins*, 2016-Ohio-8347, ¶ 39 (10th Dist.). See also *State v. Mann*, 2011-Ohio-5286, ¶ 37 (10th Dist.), quoting *State v. Nivens*, 1996 Ohio App. LEXIS 2245, *7 (10th Dist. May 28, 1996) (“ ‘While [a factfinder] may take note of the inconsistencies and resolve or discount them accordingly, * * * such inconsistencies do not render defendant’s conviction against the manifest weight or sufficiency of the evidence.’ ”). Thus, “ ‘where a factual issue depends solely upon a determination of which witnesses to believe, that is the credibility of witnesses, a reviewing court will not, except upon extremely extraordinary circumstances, reverse a factual finding . . . as being against the manifest weight of the evidence.’ ” *In re L.J.*, 2012-Ohio-1414, ¶ 21 (10th Dist.), quoting *In re Johnson*, 2005-Ohio-4389, ¶ 26 (10th Dist.). A defendant “is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented.” *State v. Rankin*, 2011-Ohio-5131, ¶ 29 (10th Dist.). See also *State v. J.E.C.*, 2013-Ohio-1909, ¶ 42 (10th Dist.).

{¶ 33} Based on our review of the record before us, we conclude the state’s evidence was consistent in many material respects. Thus, we decline to substitute our judgment for that of the jury, as the finder of fact, concerning the credibility of the witnesses who testified at trial or the weight to be afforded their testimony. The jury was in the best position to

consider any discrepancies in the evidence and testimony regarding the events that took place on October 18, 2022. The jury was also in the best position to evaluate the credibility of the live testimony from the eyewitnesses, U.H., and the responding officers in contrast with Mr. Johnson's account.

{¶ 34} After reviewing the record and for the reasons set forth above, we cannot say this is one of the rare cases where the trier of fact clearly lost its way weighing the evidence and finding Mr. Johnson guilty of felonious assault with a firearm specification. Having reviewed the entire record, weighed the evidence and all reasonable inferences, and considered the credibility of witnesses, we conclude the jury did not lose its way and create a manifest miscarriage of justice when it found the state proved beyond a reasonable doubt that Mr. Johnson did not act in self-defense. Because Mr. Johnson has not demonstrated a manifest miscarriage of justice warranting appellate intervention, his contention that his conviction for felonious assault is against the manifest weight of the evidence is not well-taken. Accordingly, we overrule Mr. Johnson's sole assignment of error.

III. CONCLUSION

{¶ 35} Having overruled Mr. Johnson's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BOGGS, P.J. and BEATTY BLUNT, J., concur.
