

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	CASE NO. CA2026-03-035
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
ALEX GRAFFT MASSEY,	:	10/13/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2025-06-0754

Michael T. Gmoser, Butler County Prosecuting Attorney, and Stephen M. Wagner, Assistant Prosecuting Attorney, for appellee.

Law Office of John H. Forg, and John H. Forg, for appellant.

OPINION

PIPER, P.J.

{¶ 1} Appellant, Alex Grafft Massey, appeals his conviction in the Butler County Court of Common Pleas after a jury found him guilty of one count of felonious assault.

For the reasons set forth below, we affirm Massey's conviction.

{¶ 2} On July 21, 2025, a Butler County Grand Jury indicted Massey on two counts of felonious assault in violation of R.C. 2903.11(A)(1) (serious physical harm). The charges arose from a May 19, 2025 altercation at the Open Hands Food Pantry involving Massey, Larry Tye, Sr. ("Senior"), his son, Larry Tye, Jr. ("Junior"), and Ethan Gray, Junior's nephew ("Nephew"). On July 30, 2025, Massey pled not guilty. Five months later, on January 21, 2026, Massey filed a notice of self-defense with the trial court.

{¶ 3} On February 2 and 3, 2026, the matter was tried to a jury. At trial, the evidence showed that Massey volunteered at the food pantry. On Mondays, the food pantry hosts community grill nights, during which community members can receive a hot meal and take food home. At the grill night on May 19, 2025, Massey worked the grill while Senior, Junior, and Nephew attended. Junior and Massey knew each other and had interacted a few times before the May 19, 2025 altercation at issue in this case.

{¶ 4} Upon Junior's arrival, he approached Massey, who was sitting near the grill. Witnesses saw Massey jump out of his chair by the grill, shouting, "I'm going to kill you!", and strike Junior on the side of the head. Junior fell and hit his head on the pavement. Massey then approached Junior and repeatedly kicked him as he lay on the ground, continuing to shout, "I'm going to kill you!" Other members tried to restrain Massey and stop the assault. This included Nephew. However, when Nephew attempted to intervene, Massey elbowed him above his left eye, causing a gash. Witnesses did not hear Junior make any threats or derogatory remarks to Massey before the assault, and Junior denied making any threats.

{¶ 5} In his defense, Massey testified that both Junior and Senior were following him and that Junior had stared at him on a previous occasion. Massey also testified that he felt threatened when Junior and Senior showed up at the food pantry for grill night.

According to Massey, when Junior approached him, he said, "something ain't right with you, man" and "we're going to come see you again tonight." Massey further testified that, several days earlier, a vehicle carrying Junior as a passenger had tried to run him over. Massey testified that these events had led him to fear that Junior and Senior would jump him, and that he just "flipped out."

{¶ 6} At the close of evidence, a discussion was had with respect to Massey's request for a self-defense instruction. After that discussion, the trial court concluded the evidence did not support such an instruction and declined to give it. The jury then retired to deliberate and returned a guilty verdict against Massey on the Count 1 felonious assault charge involving Junior, but acquitted Massey of the Count 2 charge involving Nephew. The trial court sentenced Massey to an indefinite term of two to three years in prison for the felonious assault.

{¶ 7} Massey now appeals, raising one assignment of error for our review, which states:

THE TRIAL COURT ERRED IN VIOLATION OF MASSEY'S
RIGHT TO DUE PROCESS OF LAW BY FAILING TO
INSTRUCT THE JURY OF THE ISSUE OF SELF-
DEFENSE.

{¶ 8} Massey argues that the trial court erred by denying his request for a self-defense jury instruction on the ground that he was not in danger of immediate physical harm. Massey does not argue that his due process rights were violated, nor does he claim that any constitutional right was implicated. Massey instead contends, without addressing prejudice specifically, that the right to self-defense does not require an immediate threat of harm. We disagree.

{¶ 9} "An appellate court 'reviews whether a claim of self-defense is subject to the sufficiency-of-the-evidence standard de novo.'" *State v. Crawford*, 2024-Ohio-691, ¶

23 (12th Dist.), quoting *State v. Palmer*, 2024-Ohio-539, ¶ 16. "And when a trial court refuses to give a requested jury instruction, the proper standard of review is whether the trial court abused its discretion under the facts and circumstances of the case." *Id.* An abuse of discretion occurs when the court's decision is unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *State v. Jones*, 2015-Ohio-5029, ¶ 12 (12th Dist.), citing *State v. Hancock*, 2006-Ohio-160, ¶ 130.

{¶ 10} In deciding whether to give a self-defense instruction, the trial court must view the evidence in the light most favorable to the defendant without regard to credibility. *Crawford* at ¶ 24. If the evidence conflicts on the issue of self-defense, the instruction must be given to the jury. *Id.* However, if the evidence is merely speculative, it is insufficient to raise the affirmative defense, and submitting the issue to the jury is unwarranted. *Id.* A defendant's bare assertion of self-defense is insufficient. *Id.*

{¶ 11} R.C. 2901.05(B)(1) provides

A person is allowed to act in self-defense, defense of another, or defense of that person's residence. If, at the trial of a person who is accused of an offense that involved the person's use of force against another, there is evidence presented that tends to support that the accused person used force in self-defense, ... the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, ... as the case may be.

{¶ 12} In applying R.C. 2901.05(B)(1) in the context of whether a jury instruction is warranted, we have observed that the statute, as amended, "places the initial burden of producing evidence 'that tends to support' a self-defense claim upon the defendant." *Crawford*, 2024-Ohio-691, at ¶ 21 (12th Dist.); see also *State v. Sturgill*, 2020-Ohio-6665, ¶ 19 (12th Dist.); and *State v. Jacinto*, 2020-Ohio-3722, ¶ 49 (8th Dist.). Thus, "a defendant charged with an offense involving the use of force has the burden of producing legally sufficient evidence that the defendant's use of force was in self-defense." *State v.*

Messenger, 2022-Ohio-4562, ¶ 19. The burden then shifts to the State to prove beyond a reasonable doubt that the defendant did not use force in self-defense. *Crawford* at ¶ 21. To defeat a self-defense claim, the State must disprove only one element beyond a reasonable doubt. *State v. Speaks*, 2024-Ohio-15, ¶ 81 (12th Dist.), citing *State v. McFarland*, 2022-Ohio-2326, ¶ 43 (12th Dist.).

{¶ 13} In a case involving the use of nondeadly force, a defendant is justified in using force against another if (1) he was not at fault in creating the situation giving rise to the altercation and (2) he had reasonable grounds to believe and an honest belief, even though mistaken, that he was in imminent danger of bodily harm and his only means to protect himself from the danger was by the use of force not likely to cause death or great bodily harm. *State v. Thompson*, 2025-Ohio-4508, ¶ 11 (12th Dist.).

{¶ 14} Upon a thorough review of the record, we find that the trial court did not err in denying Massey's request for a self-defense jury instruction. This is because, as the record establishes, the evidence shows that Massey presented no threat of imminent bodily harm by Junior. That is to say, Massey failed to present any evidence to support the second element of his self-defense claim, thereby failing to meet his burden of production.

{¶ 15} For the first element of Massey's self-defense claim, we view the evidence in the light most favorable to him, without regard to credibility. We therefore accept at face value his trial testimony that Junior threatened him, saying, "something ain't right with you" and "we're going to come see you again tonight," and that, in the days before the May 19, 2025 altercation, a vehicle carrying Junior as a passenger tried to run him over. Therefore, accepting this testimony as true, Massey has met his burden of production on the first element of self-defense. See *Messenger*, 2022-Ohio-4562, at ¶ 25 ("Similarly to the standard for judging the sufficiency of the state's evidence, if the defendant's evidence

and any reasonable inferences about that evidence would allow a rational trier of fact to find all the elements of a self-defense claim when viewed in the light most favorable to the defendant, then the defendant has satisfied the burden.").

{¶ 16} However, Massey has not satisfied the second element of his self-defense claim: that he faced an imminent danger of bodily harm. Contrary to Massey's belief, the defendant must be in imminent danger.¹ In this appeal, Massey failed to cite any Ohio case law stating this proposition of law, nor did he present any evidence that Junior posed any imminent threat of bodily harm to him. A mere danger is not enough. Thus, given the facts in this case, the trial court did not err by declining to provide the self-defense jury instruction upon finding the evidence was insufficient to show Massey was in imminent danger of bodily harm from Junior. That is, viewing the evidence in light most favorable to the defendant without regard to credibility, no reasonable juror could have found that Massey was in imminent danger of bodily harm and therefore needed to act in self-defense.

{¶ 17} For the reasons set forth above, Massey failed to meet his burden of production on the second element of self-defense and was therefore not entitled to have such an instruction provided to the jury in this case. Therefore, finding no merit to Massey's argument raised herein, Massey's single assignment of error is overruled. Accordingly, having now overruled Massey's single assignment of error, Massey's appeal is denied.

{¶ 18} Judgment affirmed.

M. POWELL and SIEBERT, JJ., concur.

1. "Imminent danger" is defined to mean "[a]n immediate, real threat to one's safety that justifies the use of force in self-defense." *Black's Law Dictionary* (12th Ed. 2024).

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge