[Cite as *State v. Tharp*, 2026-Ohio-4625.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
HOLMES COUNTY, OHIO

STATE OF OHIO Plaintiff-Appellee BRENT THARP Defendant-Appellant	Case No. 26CA003 Opinion And Judgment Entry Appeal from the Holmes County Municipal Court, Case No. 25CRB00072 Judgment: Affirmed Date of Judgment Entry: November 19, 2026

BEFORE: Andrew J. King, Craig R. Baldwin, and Kevin W. Popham, Judges

APPEARANCES: Matthew Muzic, Robert K. Hendrix, for Plaintiff-Appellee; Edward Clark Corley, for Defendant-Appellant

OPINION

Popham, J.,

{¶1} Appellant Brent Tharp ("Tharp") appeals from his conviction following a jury trial in the Holmes County Municipal Court. For the reasons that follow, we affirm.

Facts and Procedural History

{¶2} On May 14, 2025, Tharp was charged in the Holmes County Municipal Court with one count of assault, in violation of R.C. 2903.13(A), a first-degree misdemeanor, and one count of resisting arrest, in violation of R.C. 2921.33, a second-degree misdemeanor.

{¶3} On May 28, 2025, Tharp's appointed counsel moved to withdraw. The trial court granted the motion and appointed Attorney Kellogg to represent Tharp. Attorney

Kellogg subsequently moved to withdraw, and the trial court granted that motion on September 10, 2025, appointing Attorney Beau Cross as substitute counsel.

{¶4} On September 29, 2025, Attorney Cross filed a suggestion of incompetency. The trial court ordered an examination to determine whether Tharp was competent to stand trial.

{¶5} On October 23, 2025, Attorney Cross moved to withdraw as counsel. The trial court scheduled a hearing on the competency evaluation and the motion to withdraw for November 12, 2025. At the hearing, the parties stipulated to the competency report's conclusion that Tharp was competent to stand trial. (Nov. 12, 2025, Tr. at 14.) The trial court found Tharp competent and denied counsel's motion to withdraw. (*Id.*)

{¶6} On March 5, 2026, the trial court granted the State's motion to dismiss the resisting-arrest charge. The case proceeded to a jury trial on the assault charge.

{¶7} The State presented the following evidence.

{¶8} On May 10, 2025, Sonny Tharp, Jr., hosted a birthday party for his wife at their home in Holmes County, Ohio. B.C., a friend of Tharp's son, N.T., was visiting that day.[1] Tharp, who is Sonny Jr.'s younger brother, and their father, Sonny Tharp, Sr., were also present.

{¶9} Sonny, Jr. testified that a surveillance camera mounted above the back porch recorded the incident. The recording was admitted as State's Exhibit 1. While reviewing the recording, Sonny Tharp, Jr. identified the individuals and described their actions.

[1] N.T. and B.C. are minors.

{¶10} At timestamp 08:42:06, Tharp enters the camera's view. At 08:42:16, Tharp pushes B.C. in the head and begins chasing N.T., appearing to raise his arm as if to strike him. At 08:42:19, B.C. chases Tharp and pushes him in the back. At 08:42:21, Tharp turns and squares up to B.C. At 08:42:24, Tharp extends his finger toward B.C.'s face as B.C. begins backing away. At 08:42:28, Tharp grabs B.C. by the neck. One second later, Tharp lifts B.C., who was eleven years old, off the ground by his neck. At 08:42:31, Tharp slams B.C. to the ground with such force that B.C.'s body is parallel to the ground at impact.

{¶11} N.T., who was eleven years old at the time, also testified. While viewing State's Exhibit 1, he identified B.C. and Tharp. N.T. testified that Tharp attempted to swing at him, apparently because N.T. had given Tharp a dirty look. According to N.T., B.C. then pushed Tharp in the back and said, "You don't put your hands on [N.T.]." Tharp responded, "I do what I want." N.T. testified that several seconds passed between B.C.'s shove and Tharp's attack on B.C.

{¶12} B.C. testified that he was eleven years old at the time of the incident, weighed approximately seventy-five pounds, and stood four feet seven inches tall. He had never met Tharp before the party.

{¶13} While viewing State's Exhibit 1, B.C. testified that Tharp first pushed his face out of the way before chasing N.T. B.C. then ran up and pushed Tharp in the back. Tharp turned and squared up to B.C., then picked him up by the neck and "choke slammed" him to the ground.

{¶14} Deputy Naomi Strausbaugh was the State's final witness. She testified that she recorded the homeowner's surveillance footage on her work phone and that the recording was admitted as State's Exhibit 1. Deputy Strausbaugh later arrested Tharp at his home that

evening. Tharp appeared to be intoxicated. The deputy testified that she did not believe Tharp's actions were reasonable under the circumstances. She also testified that Tharp's father, Sonny Tharp, Sr., told her that Tharp was so intoxicated he probably did not remember what had happened.

{¶15} Tharp testified in his own defense. He stated that, while attending the party at his brother's home, he chased his nephew, N.T., outside with the intention of giving him a "noogie" as part of a family ritual. Tharp testified that B.C. then assaulted him by placing his hands around Tharp's neck, leaving scratch marks, and saying, "I'm going to choke you, bitch…turn around so now I'm going to kill you, I'm going to kill you, turn around so I can choke you." (Tr. at 69-70.)

{¶16} Tharp further testified that B.C. blindsided him and pushed him in the back. According to Tharp, he responded in self-defense by holding B.C. in his arms, and B.C. accidentally fell from his grasp. Tharp admitted that he was intoxicated at the time of the incident. (Tr. at 70.) He denied intending to hurt B.C. (Tr. at 71-72.)

{¶17} Sonny Tharp, Sr., also testified for the defense. He stated that he saw B.C. jump on Tharp while Tharp was chasing N.T. According to Tharp, Sr., B.C. grabbed Tharp and said, "Leave him alone, you mother fucking bitch." (Tr. at 77.) Tharp, Sr. testified that he and Tharp were walking toward the car when he heard someone say, "I'm going to fucking kill you," followed by a "boom." He then saw B.C. on the ground. (Tr. at 78.) Tharp, Sr. acknowledged that he told the deputy who arrested Tharp that Tharp was intoxicated.

{¶18} The trial court instructed the jury on self-defense involving nondeadly force. The jury found Tharp guilty of assault.

{¶19} The trial court scheduled sentencing for March 25, 2026. On that date, the court sentenced Tharp to 180 days in the Holmes County Jail, with 150 days suspended. The court also placed Tharp on community control for up to two years and imposed a $250 fine plus court costs.

Assignment of Error

{¶20} Tharp raises one assignment of error,

{¶21} "I. Appellant's conviction was against the manifest weight of the evidence in violation of the Fifth and Fourteenth Amendments to the United States Constitution and comparable provisions of the Ohio Constitution concerning the right of to due process."

I.

{¶22} In his first assignment of error, Tharp contends that the State failed to disprove his claim of self-defense beyond a reasonable doubt.

Standard of Review: Manifest Weight of the Evidence

{¶23} A claim that the State failed to disprove self-defense is reviewed under the manifest-weight-of-the-evidence standard. *State v. Messenger*, 2022-Ohio-4562, ¶ 27; *State v. Smiley*, 2025-Ohio-2666, ¶ 19 (5th Dist.).

{¶24} A manifest-weight challenge concerns the persuasive force of the evidence. *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 19. In conducting this review, an appellate court acts as a "thirteenth juror," independently reviewing the record, weighing the evidence and the reasonable inferences drawn from it, considering witness credibility, and determining whether the jury clearly lost its way and created a manifest miscarriage of justice. *State v. Jordan*, 2023-Ohio-3800, ¶ 17; *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). Reversal on manifest-

weight grounds is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *Thompkins* at 387.

{¶25} Because the jury personally observes the witnesses, we afford substantial deference to its credibility determinations. *Eastley* at ¶ 21; *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). As the court explained in *State v. Reillo*, 2026-Ohio-2701, ¶ 3, an appellate court sits as a thirteenth juror when evidence contradicts the factfinder's findings or when a witness's testimony is so inconsistent on material facts, so impeached, or so fantastical as to be patently unbelievable. Without conflicting evidence or testimony that has been completely discredited, there is little for an appellate court to reweigh. *Id.*

{¶26} In addition, the Ohio Constitution requires the unanimous concurrence of all three appellate judges before a conviction may be reversed as against the manifest weight of the evidence. Ohio Constitution, Article IV, Section 3(B)(3); *Bryan-Wollman v. Domonko*, 2007-Ohio-4918, ¶¶ 2-4.

Governing Law: Self-Defense

{¶27} The parties agreed to an instruction on self-defense involving nondeadly force. R.C. 2901.05(B)(1) provides, in pertinent part:

> A person is allowed to act in self-defense…. 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 the force in self-defense …, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense.

{¶28} A defendant who raises self-defense admits the facts claimed by the prosecution but relies on additional facts or circumstances that exempt the defendant from criminal liability. *State v. Poole*, 33 Ohio St.2d 18 (1973).

{¶29} Under R.C. 2901.05(B)(1), the defendant initially bears the burden of production by presenting evidence that tends to support a claim of self-defense. *Messenger*, 2022-Ohio-4562, ¶ 21; *State v. Davidson-Dixon*, 2021-Ohio-1485, ¶ 18 (8th Dist.); *State v. Paskins*, 2022-Ohio-4024, ¶ 49 (5th Dist.). Once that burden is met, the burden shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense.

{¶30} To establish self-defense involving nondeadly force, the evidence must tend to show that the defendant (1) was not at fault in creating the situation giving rise to the use of force, (2) had a reasonable and honest belief that he was in imminent danger of bodily harm, and (3) did not use more force than was reasonably necessary to repel the attack. *Paskins* at ¶ 48. The State need disprove only one of these elements to defeat the claim. *State v. Jackson*, 22 Ohio St.3d 281, 284 (1986); *State v. Staats*, 2021-Ohio-1325, ¶ 28 (5th Dist.); *Paskins* at ¶ 49; *State v. Carney*, 2020-Ohio-2691, ¶ 31 (10th Dist.).

{¶31} Because the jury was instructed on self-defense, the question before us is whether the jury clearly lost its way in rejecting Tharp's claim and finding that the State disproved self-defense beyond a reasonable doubt.

Application

{¶32} Tharp argues that the State failed to disprove self-defense. The evidence presented competing accounts of the altercation, but the surveillance video provided the jury with an opportunity to evaluate the parties' actions as they unfolded.

{¶33} The video shows Tharp pushing B.C. in the head before chasing N.T., appearing to raise his arm as if to strike him. B.C. then follows Tharp and pushes him in the back. Tharp turns toward B.C. and squares up to him. As B.C. begins backing away, Tharp extends his finger toward B.C.'s face, grabs him by the neck, lifts him off the ground, and slams him to the ground. B.C. was eleven years old at the time, weighed approximately seventy-five pounds, and stood four feet seven inches tall.

{¶34} This evidence supports the jury's rejection of Tharp's self-defense claim on more than one basis. First, the jury reasonably could find that Tharp was at fault in creating the confrontation. Before B.C. pushed him, Tharp had pushed B.C. in the head and pursued N.T., apparently attempting to strike him. B.C. testified that he intervened after Tharp put his hands on N.T. The jury could reasonably view B.C.'s subsequent push as a response to Tharp's conduct rather than conclude that B.C. alone created the situation that led to the use of force.

{¶35} Second, even if the jury believed that B.C.'s push initiated the immediate physical contact between the two, it reasonably could find that Tharp used more force than was necessary to repel it. A person acting in self-defense may use only the force reasonably necessary under the circumstances. *State v. Williford*, 49 Ohio St.3d 247 (1990). The video shows Tharp turning toward B.C., confronting him as B.C. begins to back away, grabbing him by the neck, lifting him off the ground, and forcefully slamming him down. The jury could reasonably conclude that this response exceeded the force necessary to protect against the bodily harm posed by B.C.'s push – particularly given the physical differences in body habitus, and the age difference between Tharp and B.C.

{¶36} The jury was responsible for assessing the witnesses' credibility and determining the weight to assign their testimony. Self-defense claims frequently turn on credibility determinations. *State v. Jamii*, 2023-Ohio-4671, ¶ 78 (10th Dist.); *State v. Sexton*, 2025-Ohio-718, ¶ 41 (1st Dist.); *State v. Morgan*, 2024-Ohio-5843, ¶ 40 (7th Dist.). The jury was free to believe all, part, or none of any witness's testimony. *State v. Petty*, 2017-Ohio-1062, ¶ 63 (10th Dist.); *State v. Davis*, 2024-Ohio-1504, ¶ 60 (5th Dist.). Conflicting testimony, standing alone, does not render a conviction against the manifest weight of the evidence. *State v. Morris*, 2018-Ohio-5252, ¶ 51 (10th Dist.).

{¶37} Here, the jury's rejection of self-defense was supported not only by the testimony of the State's witnesses but also by the surveillance video depicting the altercation. Although Tharp testified that B.C. attacked him and that B.C.'s fall was accidental, the jury was entitled to assess that account against the recorded sequence of events. Upon independently reviewing the evidence, we find no basis to conclude that the jury clearly lost its way in rejecting Tharp's claim.

{¶38} This is not the exceptional case in which the evidence weighs heavily against the conviction. The record supports the jury's determination that the State disproved self-defense beyond a reasonable doubt, either because Tharp was at fault in creating the confrontation or because he used more force than was reasonably necessary under the circumstances.

Conclusion

{¶39} After independently reviewing the record, weighing the evidence and the reasonable inferences drawn from it, and considering witness credibility, we conclude that the jury did not clearly lose its way or create a manifest miscarriage of justice in rejecting Tharp's

claim of self-defense. The jury reasonably could find that Tharp was at fault in creating the confrontation or that he responded to B.C.'s push with excessive force. Because the State was required to disprove only one element of self-defense beyond a reasonable doubt, the jury's rejection of the defense is not against the manifest weight of the evidence.

{¶40} Accordingly, Tharp's first assignment of error is overruled.

{¶41} For the reasons stated in our Opinion, the judgment of the Municipal Court of Holmes County, Ohio is affirmed. Costs to be paid by Appellant Brent Tharp.

By: Popham, J.

King, P.J. and

Baldwin, J., concur