

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. {48}L-25-00315

Appellee

Trial Court No. CRB-25-6518

v.

Yahya Hasan

DECISION AND JUDGMENT

Appellant

Decided: September 29, 2026

* * * * *

Rebecca Facey, City of Toledo Prosecuting Attorney, and
Jimmie Jones, Assistant Prosecuting Attorney, for appellee.

Autumn D. Adams, for appellant.

* * * * *

DUHART, J.

{¶ 1} This is an appeal by appellant, Yahya Hasan, from the December 3, 2025 judgment of the Toledo Municipal Court (“trial court”). For the reasons that follow, we affirm the trial court’s judgment.

{¶ 2} Hasan sets forth three assignments of error:

Assignment of Error I:

Is the State/City able to overcome its burden of proof when [Hasan] used self-defense after [Hasan] was grabbed and physically moved by the complaining witness?

Assignment of Error II:

Did [Hasan] suffer from ineffective assistance of counsel when his attorney failed to object to the [j]udge's incorrect standard of law and failed to call [Hasan] to the stand to testify?

Assignment of Error III:

Did the errors in this case rise to the level of denying [Hasan] a fair trial?

Background

{¶ 3} On July 31, 2025, it was move-out day at an apartment complex (“the complex”) which housed mainly college students, located at Dorr Street and Westwood Avenue in Toledo, Ohio. Most of the residents moved out in the morning, but A.M. (“the tenant”) was moving out of her apartment past noon and was one of the last residents to move out.

{¶ 4} The tenant parked her car by the sidewalk in the circular driveway of the complex to make it easier on herself to load her car. She was moving quickly because other cars could not get through as there was also a big dumpster next to where her car was parked, but there was plenty of room for cars to turn around and go the other way. A vehicle came around the corner, driven by Hasan, who did not live in the complex. Hasan started honking, laying on the horn, and screaming from his window at the tenant.

The tenant could not really understand what Hasan was saying but she knew he was causing a scene and acting like a crazy man. As she was making her way to move her car, she noticed Z.C., a management employee of the complex, standing nearby. Z.C. heard Hasan going crazy on the tenant and advised Hasan not to talk to the tenant that way and directed Hasan to turn his vehicle around and leave the complex. Z.C. and Hasan started going back and forth, verbally, while the tenant attempted to stay calm, but she was getting mad because Hasan could just turn his vehicle around, like Z.C. ordered Hasan to do.

{¶ 5} As the three were “verbally going off,” according to the tenant, Hasan was video recording the events on his cellphone (“Hasan’s video”). What follows is demonstrated on Hasan’s video. The trio were all talking at each other when Hasan asked, “What are you going to do?” Z.C. said calmly that he was calling the cops at which time another lady (“the lady”) came over to help de-escalate the situation. Hasan said, “Call the cops, call the cops. Yeah, I want to see what you are going to do. You coming here talking . . . unrespectfully. [sic]” Hasan began to yell, “And you are raising your voice!” Hasan then shouted angrily, “Who are you to disrespect me?” Z.C. said Hasan was acting like an idiot. Hasan yelled, “Fucking bitch!” Z.C. said loudly to Hasan, “You are the one acting like a fucking bitch.” Hasan yelled, “You are a bitch, bitch! . . . You’re a fucking bitch!” Z.C. said to Hasan, “You a little fucking p--y.” Hasan yelled, “You’re a fucking bitch! Who you talking to like that?” Hasan opened his vehicle’s door and the lady instructed Hasan, “No, you’re getting back in your car.”

Hasan ignored the lady, and as he was getting out of his vehicle, he said, “Who . . . the fuck you talking to like that? Who the fuck you talking to like that?” Hasan was out of his vehicle and feet away from Z.C. when the lady pushed Z.C. back with her arm and got in front of Hasan so she was in between the men. Hasan said to Z.C., “Come on, put your hands on me.” Z.C. was standing with his arms at his side and a cigarette in his mouth when Hasan’s video ended.

{¶ 6} At some point during the interaction, the tenant walked up to Hasan’s vehicle because he was harassing her and said some things to Hasan. She then attempted to grab at or push away his phone which he was shoving in her face. It “got physical” when Z.C. saw Hasan going after the tenant, trying to hit her. Z.C. was concerned about the tenant’s safety so he intervened, stepped in between the tenant and Hasan, grabbed Hasan to try to restrain him and pushed Hasan toward Hasan’s vehicle. Hasan swung his phone at Z.C. and hit Z.C. in the face multiple times with the phone, breaking the phone case, after which the tenant got in between Z.C. and Hasan and pushed them apart.

{¶ 7} When the interaction was over, the tenant noticed that Z.C.’s face was “full of blood.” Hasan left. Police arrived at the complex and noticed that Z.C. had a huge gash on his head and was bleeding. Z.C. went to the hospital where he received stitches in his face and was diagnosed with a concussion, which caused him on-going problems.

{¶ 8} That same day, Hasan was identified by police and charged with assault in violation of R.C. 2903.13(A), a first-degree misdemeanor for “knowingly caus[ing] physical harm to [Z.C.] by striking him in the face multiple times with a cellphone

causing a bleeding laceration to the victim[']s forehead.” Hasan subsequently entered a plea of not guilty. Just before trial, Hasan filed with the trial court a notice of intent to introduce evidence of self-defense.

{¶ 9} A bench trial was held on December 3, 2025. The judge heard the testimony of three witnesses called by the State: Z.C., the tenant and a police officer. The judge admitted into evidence, without objection, two exhibits offered by the State: a photograph of Z.C.’s bloodied face and Hasan’s video of the incident before it got physical. Hasan did not testify at trial or present any evidence. The judge found Hasan guilty and sentenced him to 180 days in jail, with 90 days suspended, and placed him on one year of active probation with the conditions that he have no further offenses, he attend anger management classes, and he have no contact with the complex.

{¶ 10} Hasan appealed. He filed with the trial court a motion to stay execution of sentence pending appeal; the trial court granted Hasan’s motion.

Trial Court’s Findings

{¶ 11} Following the bench trial, the trial court judge stated in relevant part:

All right, having reviewed the evidence, the Court has reached a decision, if the defendant could stand, please. Okay, the way the law works here in Ohio, to support a self-defense claim involving use of non-deadly force the accused must show; one, he is not at fault in creating the situation giving rise to the fight. Two, [he] has reasonable grounds to believe or an honest belief that he is in imminent danger of bodily harm; and, three, he does not use more force than is reasonably necessary to defend himself against imminent danger of bodily harm.

Having seen [Hasan’s] video multiple times and reviewing it also again back in chambers, I’m hearing from the defendant multiple things such as who are you to disrespect me; actually gets out of the car, come on

put your hands on me. Language by the defendant. The testimony provided at best shows that the victim shoved the defendant, but the Court of Appeals has set forth limitations to the application of self-defense, including if the force is so grossly disproportionate as to the apparent danger as to show revenge or an evil purpose to injure. The Court of Appeals also set forth that when one uses a greater degree of force than necessary under all the circumstances it is not justifiable on the grounds of self-defense.

So, again, at best the victim shoved the defendant and in return the victim got multiple stitches and a concussion. For these reasons I do believe the prosecution has proven its case beyond a reasonable doubt that the defendant did not act in self-defense, and the prosecution also proved beyond a reasonable doubt all the essential elements of the assault charge. So I will find the defendant guilty.

First Assignment of Error

Hasan's Arguments

{¶ 12} Hasan argues the State cannot overcome its burden of proof that Hasan was not entitled to use non-deadly self-defense against Z.C., who grabbed Hasan and physically moved Hasan's body. Hasan asserts that the trial court believed he was not entitled to use self-defense for three reasons: (1) his language, (2) he got out of his car, and (3) he used more force than necessary "to repel two angry adults screaming and in Hasan's personal space because Z.C. 'got multiple stitches and a concussion.'" Hasan contends that while the trial court acknowledged Z.C. shoved Hasan, it was irrelevant to the trial court because Hasan yelled at Z.C.

{¶ 13} Hasan submits that he presented sufficient evidence to show he was not at fault in creating the situation which gave rise to Z.C. being struck in the head. Hasan asserts "[t]he physical altercation started by an angry and vulgar Z.C., who stood 2-3

arms lengths away from Hasan, rushed at Hasan and grabbed Hasan to restrain Hasan and then physically moved Hasan's body back towards Hasan's car." Hasan maintains that up until that point, only words had been exchanged and Z.C. had only a "belief" that Hasan was going to swing at the tenant.

{¶ 14} Hasan further argues that it was against the manifest weight of the evidence for the trial court to find that Hasan's language and getting out of his car meant that he created the situation which gave rise to the physical assault of Z.C. Hasan sets forth that "[i]t is right in the jury instructions the [t]rial [c]ourt was to consult in rendering its decision that 'words alone do not justify the use of force. Resort to force is not justified by abusive language, verbal threats or other words, no matter how provocative.' CR 421.19(11)." Hasan contends it was an improper application of jury instructions for the trial court to find his use of swear words meant he created the situation which gave rise to him being grabbed, restrained and moved by Z.C., which caused Hasan to use force against Z.C.

{¶ 15} Hasan asserts that under the second element of self-defense, he had to present evidence that a reasonable person, under the same circumstances and with Hasan's same subjective beliefs and faculties, would have believed that he was in imminent danger and that force was necessary. Hasan cites to *State v. Thomas*, 77 Ohio St.3d 323, 330 (1997), *State v. Koch*, 2019-Ohio-4099, ¶ 79 (2d Dist.) "(holding 'the record established that [one co-defendant] was clearly at fault by initiating the attack that ultimately resulted in [the victim] acting in self-defense by stabbing [one co-

defendant.’]” and *Maumee v. Yeager*, 2024-Ohio-858 (6th Dist.), in support. Hasan sets forth:

Z.C. admitted he grabbed and took physical control over Hasan’s body because Z.C. “believed” Hasan was going to strike [the tenant]. Thus, Z.C. asserted self-defense of another. But, to assert self-defense of another “if the person aided is the one at fault, then the intervenor is not justified in his use of force and is guilty of assault. Therefore, one who claims the lawful right to act in defense of another must meet the criteria for the affirmative defense of self-defense.” *State v. Wegner* [sic], 58 Ohio St.2d 336, 340 . . . [(1979)]. What is significant is that [the tenant] never testified about being physically threatened by Hasan or being scared that she was going to be attacked or injured by Hasan. The evidence presented at trial also showed that [the tenant] was not in fear of her safety because she admitted to getting closer to Hasan and grabbed at his phone with the intent to take the phone out of his hand because “what the hell, you know, what are we doing here.” . . . [The tenant] admitted Hasan never touched her. . .

{¶ 16} Notwithstanding, Hasan submits that to meet his burden of production, his attorney needed to elicit this testimony from the State’s witnesses on cross-examination or Hasan needed to testify, but none of the State’s witnesses would have been able to testify about Hasan’s particular characteristics at the time of the attack, so Hasan’s counsel was ineffective by not putting Hasan on the stand.

{¶ 17} Regarding the third element of self-defense, Hasan sets forth that “[o]ur case law provides that the only requisite state of mind or intent that a defendant must have had to assert . . . self-defense is that he or she intended to use force and that such force was used to repel or escape his or her attacker, R.C. 2901.05(B)(1), and our case law does not require any other state of mind, let alone intent to kill or maim. *State v. Wilson*, [2024-Ohio-776].” Hasan argues he was legally allowed to be driving on the roadway when he was stopped by a vehicle illegally blocking the road, and there was no

evidence that he was not permitted to be on that street, “as it is a public roadway anyway.” He also asserts the State presented no evidence that the force used exceeded what was reasonably necessary under the circumstances as no witness testified that lesser force was available or feasible in that moment and the severity of injury is not evidence of intent, state of mind or reasonableness. He further submits it was improper for the State to argue and the trial court to find that Hasan’s lack of injuries meant he did not have the legal right to use self-defense against Z.C. In addition, Hasan claims “[a]nother individual was between the path Hasan could have taken to leave. . . No witness presented by the State testified or presented evidence that Hasan was not placed in fear of bodily harm.”

State’s Argument

{¶ 18} The State counters that it proved that Hasan did not act in self-defense because he created the situation that led to the assault. The State argues that Hasan was safely in his car, but got out, and taunted Z.C. and the tenant. The State submits that this court in *State v. Cardell*, 2025-Ohio-5197, ¶ 27, said that “‘subsequently bragging about causing the injury is evidence that the defendant was the aggressor and lacked a bona fide fear of imminent danger or bodily harm.’” The State contends that in Hasan’s video, Hasan yells “‘Who are you to disrespect me? Who the fuck are you talking to like that? Come on put your hands on me,’” and then he gets out of the car.

{¶ 19} The State also argues that Hasan’s use of force was excessive, as Z.C.’s face was bloodied, he required stitches and he had a concussion, the effects of which

affected Z.C. some five months later. The State cites to *In re N.K.*, 2021-Ohio-3858, in support, where this court found the appellant was not entitled to the protection of self-defense due to the force used. *Id.* at ¶ 23. “[T]he evidence showed that after the victim shoved appellant in the face with an open hand, appellant, by his own admission, “beat the shit out of him.” [*Id.* at] ¶ 19. . . Appellant testified that as the victim walked toward him, he told the victim[,], “If you touch me, I’m going to hurt you.” Thereafter, the victim shoved appellant in the face with an open hand.’ [*Id.* at] ¶ 2.”

Standard of Review

{¶ 20} When determining if a judgment is against the manifest weight of the evidence, an appellate court must review the record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and decide whether in resolving any 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.” *State v. Prescott*, 2010-Ohio-6048, ¶ 48 (6th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶ 21} “In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge 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. v. Cleveland*, 10 Ohio

St.3d 77, 80 (1984). ““If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.”” *Id.* at fn. 3, quoting 5 Ohio Jur.3d, Appellate Review, § 603, at 191-192 (1978). *See also In re Z.C.*, 2023-Ohio-4703, ¶ 14.

{¶ 22} An appellate court can only disregard the presumption in favor of the fact-finder “when evidence contradicts a fact-finder’s findings” or “when a witness’s testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” *State v. Reillo*, 2026-Ohio-2701, ¶ 3. Only in those exceptional cases, the appellate court “sits as a ““thirteenth juror”” who may disagree with the fact-finder’s resolution of the conflicting evidence.”” *Id.* at ¶ 27, quoting *State v. Martin*, 2022-Ohio-4175, ¶ 26, quoting *Thompkins* at 327. “[S]uch a case could be one in which internally contradictory testimony as to material facts, direct impeachment, or fantastical testimony clearly undermines a witness’s credibility on a cold record.” *Id.* at ¶ 31.

Law

Assault

{¶ 23} Pursuant to R.C. 2903.13(A), “[n]o person shall knowingly cause or attempt to cause physical harm to another . . .”

{¶ 24} As defined in R.C. 2901.22(B), “[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. . .” R.C. 2901.01(A)(3) defines “physical harm” as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.”

Self-Defense

{¶ 25} R.C. 2901.05(B)(1) states 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 . . .

{¶ 26} R.C. 2901.09(C) provides in relevant part:

A trier of fact shall not consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense . . . reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.

{¶ 27} In *State v. Williams*, 2025-Ohio-5828, ¶ 54-55 (6th Dist.), this court stated:

To support a claim of self-defense involving the use of non-deadly force, a defendant must show that (1) he was not at fault in creating the situation giving rise to the affray; (2) he had reasonable grounds to believe or an honest belief that he was in imminent danger of bodily harm, and (3) he did not use more force than was reasonably necessary to defend against the imminent danger of bodily harm. *State v. Greer*, 2023-Ohio-103, ¶ 33 (6th Dist.). Once the defendant presents a viable self-defense claim, the State must disprove one of the elements beyond a reasonable doubt to defeat the claim. *State v. Weemes*, 2025-Ohio-2319, ¶ 32 (6th Dist.).

For purposes of a self-defense claim, the term “not at fault” is “broader than [the defendant] simply not being the immediate aggressor.” *Id.* at ¶ 34, quoting *State v. Himes*, 2023-Ohio-3561, ¶ 25 (12th Dist.). A person

may not provoke an assault or voluntarily enter an encounter and then claim self-defense. *Id.*

{¶ 28} In *State v. Messenger*, 2022-Ohio-4562, ¶ 22, 25, the Supreme Court of Ohio clarified a defendant’s burden when asserting a claim of self-defense:

The reference in R.C. 2901.05(B)(1) to “evidence presented that tends to support” self-defense indicates that the defendant’s burden of production is not a heavy one and that it might even be satisfied through the [S]tate’s own evidence. . .

[A] defendant charged with an offense involving the use of force has the burden of producing legally sufficient evidence that [his] use of force was in self-defense. . . [I]f 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 [he] has satisfied the burden.

{¶ 29} If the defendant meets his burden of production, the State then has the burden of disproving the defendant’s self-defense claim, beyond a reasonable doubt. *Yeager*, 2024-Ohio-858, at ¶ 70 (6th Dist.), citing *Messenger* at ¶ 27. The State satisfies its burden if it disproves “at least one of the elements of self-defense beyond a reasonable doubt.” *Id.*, quoting *State v. Carney*, 2020-Ohio-2691, ¶ 31 (10th Dist.).

Analysis

{¶ 30} At the outset, we note that Hasan’s case was tried to the bench, there was no jury. We therefore disregard Hasan’s arguments regarding jury instructions.

{¶ 31} Hasan was convicted of assault, pursuant to R.C. 2903.13(A), for knowingly causing physical harm to Z.C. by striking Z.C. in the face multiple times with Hasan’s phone. Z.C. testified that Hasan caused his facial injuries in the manner alleged, and a photograph of Z.C.’s bloody face was admitted into evidence. Z.C.’s testimony

also established the knowing element of the assault offense, given that Hasan repeatedly and deliberately hit Z.C. in the face with a cellphone. However, Hasan claims he hit Z.C. in self-defense after Z.C. started the physical altercation when Z.C. stood close to Hasan, grabbed Hasan to restrain him and moved Hasan towards Hasan's car.

{¶ 32} A review of the record and the applicable law shows that Hasan had the burden of producing evidence which tended to support that he was not at fault in creating the situation which led to the physical interaction with Z.C., Hasan had reasonable grounds to believe or an honest belief that he was in imminent danger of bodily harm and he did not use more force than reasonably necessary to defend against the imminent danger of bodily harm.

{¶ 33} The record contains evidence, via the testimony of the tenant and Z.C. as well as Hasan's video, that Hasan was involved in a verbal dispute with the tenant and Z.C. The dispute became physical after Hasan got out of his car and Z.C. rushed at and grabbed Hasan to restrain and move Hasan towards his vehicle to protect the tenant, after which Hasan hit Z.C. in the face with a cellphone. Viewing this evidence and any reasonable inferences in a light most favorable to Hasan, the trial court could find all of the elements of a self-defense claim: Hasan was not at fault in creating the situation which turned physical with Z.C., Hasan had reasonable grounds to believe that he was in imminent danger of bodily harm, and he lashed out.

{¶ 34} Turning to the State's burden of disproving at least one of the elements of Hasan's self-defense claim, beyond a reasonable doubt, the State provided evidence that

Hasan was at fault in creating the situation giving rise to the physical altercation. The tenant and Z.C. both testified that Hasan drove into the complex, started laying on his horn and going crazy, yelling out of his car window at the tenant, harassing her. Z.C. instructed Hasan not to talk like that to the tenant and to turn around and leave, drive away, but Hasan continued to yell at the tenant, then swore at and verbally sparred with Z.C. Hasan began to get out of his car, while still squabbling with Z.C. who was just feet away, when, as depicted in Hasan's video, the lady told Hasan not to get out of his car and she pushed Z.C. back with her arm and got in front of Hasan, who had gotten out of his car. Hasan sought to engage Z.C. by saying, "Come on, put your hands on me." Thereafter, according to Z.C.'s testimony, Hasan was going after the tenant, trying to hit her, so Z.C., as a management employee of the complex, intervened and grabbed Hasan and pushed Hasan toward Hasan's vehicle. Hasan then swung his cellphone at Z.C., attacking and injuring Z.C.

{¶ 35} The evidence demonstrates beyond a reasonable doubt that Hasan was at fault for creating the situation. The witnesses' testimony is consistent and is supported by Hasan's video. Hasan became agitated and belligerent when he encountered the tenant's vehicle in the complex's driveway, honking his horn and screaming at the tenant. His behavior only escalated after Z.C. told Hasan not to yell and to turn around and leave - Hasan made and exchanged crude comments with the tenant and Z.C. Hasan's intensity persisted and grew, despite the lady's attempts to de-escalate the situation, as he got out

of his car and goaded Z.C. to “Come on, put your hands on me.” What is more, there was no evidence that Hasan had to get out of the safety of his car.

{¶ 36} Although Z.C. admitted that he touched Hasan first, the evidence shows that Z.C. did not strike Hasan or intend to hurt Hasan. Rather, the evidence reveals that Z.C. grabbed and pushed Hasan to prevent Hasan from going after the tenant.

{¶ 37} Having found that the State presented evidence which established beyond a reasonable doubt that Hasan was at fault for creating the situation, it is unnecessary for us to address the other self-defense elements. *See Carney*.

{¶ 38} Based upon the foregoing we conclude the trial court judge did not clearly lose his way in finding that the State disproved self-defense beyond a reasonable doubt. Accordingly, we find Hasan’s first assignment of error not well-taken.

Second and Third Assignments of Error

{¶ 39} Hasan argues his counsel was ineffective because counsel failed to object to the trial court’s incorrect standard of law, failed to call Hasan to the stand to testify and allowed cumulative errors to occur.

Incorrect Standard

{¶ 40} Hasan asserts his counsel should have objected when the trial court focused on Hasan’s failure to leave the roadway. Hasan submits “there was testimony that Hasan could have just pulled away.” He references the following exchange which occurred between him and the trial court judge after the judge found him guilty:

THE COURT: How did you get out?
THE DEFENDANT: I backed away.

THE COURT: Oh, you backed away.

THE DEFENDANT: Yeah.

THE COURT: What they said that you could have done all along.

{¶ 41} Hasan insists that there is no duty to retreat in a non-deadly force self-defense case under Ohio's stand-your-ground law, so a trier of fact cannot consider the possibility of retreat when deciding if a defendant reasonably believed force was necessary. In support, Hasan cites to R.C. 2901.09(C). He observes that both witnesses testified that he had the ability to leave but did not do so. Hasan contends that the trial court "accepted this and by accepting that Hasan could have just left and failed to leave the [t]rial [c]ourt imposed an additional, unlawful burden of production on Hasan by requiring that he leave." The trial court, Hasan claims, clearly analyzed the case through the self-defense elements, but he was prejudiced and denied a fair trial by the mischaracterization of his duties.

{¶ 42} Hasan further argues that the trial court "engaged in the self-defense analysis, it just did it improperly. If counsel is prejudicially ineffective for failing to ask for a jury instruction which the evidence supported the jury being provided, then surely counsel is prejudicially ineffective if it does not object to the improper application of the jury instructions given." Hasan asserts his "counsel was prejudicially ineffective for failing to object to the improper application of the jury instructions on self-defense."

Hasan Should Have Testified

{¶ 43} Hasan argues that his counsel was ineffective for not calling him to testify at trial. While Hasan acknowledges courts have held that counsel was not ineffective

based solely on a defendant's failure to testify when making a non-deadly self-defense claim, citing *State v. Brown*, 38 Ohio St.3d 305, 319 (1988), Hasan contends his counsel was ineffective for failing to call him to answer questions to determine if he acted reasonably and used no more force than necessary. Hasan also submits there are several obvious demonstrations that counsel failed to research the law, citing *State v. Clayton*, 62 Ohio St.2d 45, 49 (1980).

{¶ 44} Hasan observes that his counsel told the trial court that he advised Hasan not to testify and believed the evidence of self-defense would come out on cross-examination. Hasan argues that evidence of self-defense did not come out on cross-examination, so the only way to introduce evidence of self-defense was for him to take the stand. He asserts that he would have testified that he just swung his hands in an attempt to get away from Z.C. Hasan maintains he made this statement in mitigation, but the trial court judge informed Hasan that what was said in mitigation was not evidence.

{¶ 45} Hasan cites to *State v. Wiley*, 2004-Ohio-1008, ¶ 30 (10th Dist.), where the court held that on direct appeal, a defendant cannot demonstrate what his trial testimony would have been or how that testimony would have changed the outcome of his case. The court noted that the record was devoid of any hint as to what defendant would have testified. *Id.* The court found defendant failed to provide sufficient evidence that his counsel's decision not to call him to testify was anything more than a strategic trial decision made for the benefit of defendant. *Id.* at ¶ 31.

{¶ 46} Hasan submits the statements he made in mitigation detail why his counsel did not make a strategic trial decision to not put Hasan on the stand, which is ineffective assistance of counsel. Hasan sets forth:

When [his] counsel did not get into evidence of Z.C.'s attacks on Hasan, after no evidence of Hasan's belief he could not leave and how that realization [a]ffected Hasan's analysis of his safety, after evidence was presented that Hasan was at fault in creating the situation, after evidence of Z.C.'s injuries were admitted but no description of Hasan's injuries were admitted meant to provide effective assistance in Hasan's self-defense claim was to put Hasan on the stand. . . Also, what did Hasan do to try to get out of Z.C.'s grasp and power before Hasan struck Z.C. as this goes to the reasonableness of Hasan's fear.

{¶ 47} In addition, Hasan submits that since the tenant testified that he acted like a "crazy man," the relative sizes of Z.C. and Hasan would have been important for the trier of fact to consider.

Cumulative Errors

{¶ 48} Hasan argues that the cumulative effect of defense counsel's errors during trial prejudiced Hasan. Hasan lists three instances where he claims his counsel erred.

Z.C. was permitted to testify about a medical diagnosis

{¶ 49} Hasan observes that Z.C. testified that he continued to suffer from a concussion several months after Hasan hit him. Hasan contends that any mention of a medical diagnosis is inadmissible hearsay. Hasan cites to Evid.R. 801(C), which defines hearsay "as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the statement." Hasan asserts it is clear that Z.C. received medical services as Z.C. testified that he

received stitches on his head, and while it is not clear from the record, it is reasonable to infer that during that same medical visit, Z.C. was supposedly diagnosed with a concussion. Hasan submits that no medical records were admitted so it is unknown who diagnosed Z.C. with a concussion or how he was diagnosed. Hasan notes that the State was required to prove that Z.C. suffered physical injury, and the trial court treated a concussion as a physical injury, as well as justification for why Hasan used more force than was reasonably necessary to repel the force being used by Z.C.

{¶ 50} Hasan insists the State failed to present any evidence of who made the diagnosis or what factors were considered in making that diagnosis, thus Z.C.'s testimony about a concussion was inadmissible hearsay. Hasan further claims since counsel did not object to this admissible hearsay, this also constituted ineffective assistance of counsel.

{¶ 51} *Z.C. was permitted to testify Hasan had been previously barred from the complex and that Hasan was seen driving through the complex with a big dog although there was a trespass on him*

{¶ 52} Hasan maintains that his counsel permitted inadmissible hearsay by Z.C., which went unchallenged on cross-examination, that Hasan had been barred from the complex. Z.C. testified, "I had not met Mr. Hasan before that, but, you know, after that I spoke with security at the [complex] and found out that he had actually been barred from [the complex] way prior to that due to some violence and some drug issues." Hasan also argues that Z.C. lacked personal knowledge, under Evid.R. 602, because Z.C. admitted he never saw a trespass order or document barring Hasan from the complex. Hasan submits

a competent defense attorney would have objected to Z.C.’s testimony under hearsay without an exception.

{¶ 53} Hasan relies on *Community Properties of Ohio, Mgt. Services, LLC v. Patterson*, 2023-Ohio-939, ¶ 16 (10th Dist.), in support, where the court found the unidentified witness’s lack of personal knowledge prejudicial as the court’s reliance on only this testimony without a proper foundation constituted reversible error. Hasan asserts the State should have brought in security personnel who had personal knowledge so Hasan could cross-examine him or her.

Law

Ineffective Assistance of Counsel

{¶ 54} To establish a claim of ineffective assistance of counsel, a defendant must show “(1) deficient performance by counsel, that is, performance falling below an objective standard of reasonable representation, and (2) prejudice—a reasonable probability that, but for counsel’s errors, the result would have been different.” *State v. Myers*, 2018-Ohio-1903, ¶ 183, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984). “When considering counsel’s performance, ‘a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action “might be considered sound trial strategy.”’” *State v. Meyers*, 2025-Ohio-5824, ¶ 7-8 (6th Dist.), quoting *Strickland* at 689, quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955).

{¶ 55} “Whether or not a defendant testifies is purely a tactical decision.” *State v. Ryan*, 2006-Ohio-5120, ¶ 23 (6th Dist.), citing *State v. Bey*, 85 Ohio St.3d 487, 499 (1999), citing *Brooks v. Tennessee*, 406 U.S. 605, 612 (1972). As such, an attorney’s advice to a client regarding the decision to testify cannot be challenged on appeal as ineffective assistance of counsel unless it is shown that the decision was the result of coercion. *State v. Milligan*, 2021-Ohio-1071, ¶ 44 (6th Dist.), citing *State v. Winchester*, 2002-Ohio-2130, ¶ 12 (8th Dist.), citing *Hutchins v. Garrison*, 724 F.2d 1425, 1436 (4th Cir. 1983) and *Lema v. United States*, 987 F.2d 48, 52-53 (1st Cir. 1993).

{¶ 56} The law is clear that defense counsel is not required to perform vain acts. *State v. Walker*, 2008-Ohio-2180, ¶ 19 (8th Dist.), citing *State v. Baron*, 2003-Ohio-5376, ¶ 31 (8th Dist.) and *State v. Johnson*, 2001 WL 605410, *1 (8th Dist. May 31, 2001). Thus, the “[f]ailure to do a futile act cannot be the basis for claims of ineffective assistance of counsel, nor could such a failure be prejudicial.” *State v. Tornstrom*, 2023-Ohio-763, ¶ 24 (11th Dist.), quoting *State v. Henderson*, 2007-Ohio-2372, ¶ 42 (8th Dist.).

Allocution

{¶ 57} Crim.R. 32(A)(1) provides:

. . . Imposition of Sentence. Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

. . . Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a

statement in his or her own behalf or present any information in mitigation of punishment.

{¶ 58} “The purpose of allocution is to allow the defendant an additional opportunity to state any further information which the judge may take into consideration when determining the sentence to be imposed.” *Defiance v. Cannon*, 70 Ohio App.3d 821, 828 (3d Dist. 1990). Furthermore, “[a] Crim.R. 32 inquiry . . . represents a defendant’s last opportunity to plead his case or express remorse.” *State v. Roberts*, 2013-Ohio-4580, ¶ 66, quoting *State v. Green*, 90 Ohio St.3d 352, 359-360 (2000). “We recognize . . . that the allocution under Crim.R. 32(A)(1) is unsworn and thus may not technically amount to evidence. *See* Evid.R. 603 (witness testimony must be preceded by oath or affirmation).” *Id.* at ¶ 67.

Cumulative Error Doctrine

{¶ 59} The cumulative error doctrine provides that ““a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial court error does not individually constitute cause for reversal.”” *State v. Jones*, 2026-Ohio-634, ¶ 87 (6th Dist.), quoting *State v. McKelton*, 2016-Ohio-5735, ¶ 321, quoting *State v. Powell*, 2012-Ohio-2577, ¶ 223. In order to apply the doctrine, there must be findings “that multiple errors were committed at trial” and “that there is a reasonable probability the outcome of the trial would have been different but for the combination of the separately harmless errors.”” *Id.*, quoting *State v. Moore*, 2019-Ohio-3705, ¶ 87 (6th Dist.).

Bench Trials

{¶ 60} At bench trials, “judges are presumed to consider only relevant, competent, and admissible evidence in their deliberations.” *State v. Newton*, 2006-Ohio-81, ¶ 90, citing, inter alia, *State v. Davis*, 63 Ohio St.3d 44, 48 (1992). This is because “[j]udges . . . are presumed to know the law.” *Davis* at 48.

Analysis

{¶ 61} Again, we note that Hasan’s case was tried to the bench, there was no jury. We therefore disregard Hasan’s arguments that his counsel was ineffective for failing to request or object to jury instructions.

{¶ 62} With respect to Hasan’s argument that his counsel was ineffective for not objecting when the trial court judge focused on Hasan’s failure to leave the roadway, a review of the record shows that at the close of trial, prior to announcing his findings, the judge properly set forth the law to support a self-defense claim involving non-deadly force. The judge then applied that law to the evidence presented at trial, and in so doing, made no mention of any duty to retreat or leave.

{¶ 63} After the judge found Hasan guilty, but before sentencing, Hasan was offered the opportunity to make a statement in allocution. This statement was not testimony, as suggested by Hasan. While making the statement, Hasan was asked how he left the complex, after which the judge commented about how Hasan could have backed up, which was what the witnesses had testified Hasan could have done all along.

{¶ 64} We find there is nothing in the record to indicate the judge imposed an additional duty or burden of production on Hasan. Not only is the judge presumed to know and apply the law, but the record reveals that the judge had already found Hasan guilty of assaulting Z.C. when the comment was made about Hasan leaving the complex. Thus, counsel's objecting to this comment would have been unwarranted and futile.

{¶ 65} Regarding Hasan's assertion that his trial counsel was ineffective for failing to call Hasan to testify at trial, a review of the record shows that Hasan does not argue that he was unaware of his right to testify or that his counsel coerced him into not testifying. In fact, our examination of the trial transcript reveals that trial counsel, on the record, represented to the trial court that "it may come to light that my client may testify. I've advised him that I don't believe he should testify, however it is his right." This clearly indicates that Hasan was aware that he could testify. Moreover, Hasan has not directed us to anything in the record that demonstrates he was coerced not to testify.

{¶ 66} We therefore find that there is no evidence of coercion or that Hasan was unaware that he had the right to testify, nor is there anything in the record which suggests that Hasan was prevented from testifying by his counsel. Hence, we conclude that Hasan has not demonstrated ineffective assistance of counsel based on his failure to take the stand.

{¶ 67} As to Hasan's cumulative error arguments, addressing each argument concerning Z.C.'s testimony in turn, Z.C. testified that, "I get hit in the head with a cell[-]phone. I had to go to the hospital and get stitches. . . [a]nd I'm dealing with [a]

concussion.” Z.C. also testified, “[s]o I had to get stitches and I’m dealing with long-term concussion issues.” In view of the record and the applicable law, we find no prejudicial error. Z.C.’s testimony that he had to get stitches is proper lay testimony because it is based on first-hand observation of his own injuries, and this testimony satisfied the “physical harm” requirement of the assault statute, R.C. 2903.13(A). Z.C.’s testimony regarding his concussion was therefore cumulative to other properly admitted evidence.

{¶ 68} Z.C. further testified that he “had not met Mr. Hasan before. . . but . . . I spoke with security at the [complex] and found out that he had actually been barred from our [complex] way prior . . . due to some violence and some drug issues.” Z.C. also said that “my employees let me know that [Hasan] was driving through [the complex] right after [the incident] with a really big dog. But he’s been barred from [the complex] and there is a trespass on him, so he’s not allowed to come there at all.”

{¶ 69} Again, we find no prejudicial error, because this was a bench trial and we presume the judge only considered admissible testimony. Notwithstanding, we observe that the judge did not mention that Hasan had been barred from the complex nor did the judge refer to Z.C.’s statements when finding Hasan guilty. What is more, Hasan pointed to no evidence that the judge relied on Z.C.’s statements in arriving at the ruling that Hasan was guilty of assaulting Z.C. Furthermore, Hasan has not established these statements impacted the judge’s decision to sentence Hasan to jail, as the judge only

referenced the serious injury Z.C. suffered and Hasan’s lack of accountability for his actions.

{¶ 70} We therefore conclude that Hasan failed to show Z.C.’s statements had any prejudicial effect or that Hasan was denied a fair trial because of these statements. Accordingly, Hasan’s second and third assignments of error are not well-taken.

{¶ 71} In light of the foregoing, the December 3, 2025 judgment of the Toledo Municipal Court is affirmed. Hasan to pay the costs of appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at: http://www.supremecourt.ohio.gov/ROD/docs/.
