

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-240255
Plaintiff-Appellee,	:	TRIAL NO. C/24/CRB/3036
vs.	:	
DERRICK STEWART,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

After a verbal dispute turned physical, defendant-appellant Derrick Stewart was charged with domestic violence in violation of R.C. 2919.25(A). Following a bench trial, the trial court found Mr. Stewart guilty and placed him on community control for one year, subject to various conditions. He now appeals, maintaining that his conviction is against the manifest weight of the evidence, mostly because the record more strongly supports that he acted in self-defense. We disagree.

Although Mr. Stewart presents two assignments of error, challenging his conviction on sufficiency and manifest-weight grounds, current Ohio Supreme Court precedent instructs us that self-defense claims must be evaluated based on manifest-weight grounds, rather than sufficiency. *State v. Messenger*, at ¶ 27. “[B]ased on the recent change in the law regarding self-defense claims, the sufficiency of the evidence standard applies to the defendant’s burden of production, whereas a manifest weight

of the evidence standard applies to the state’s burden of persuasion.” *State v. Shinholster*, 2024-Ohio-1606, ¶ 15 (1st Dist.), citing *Messenger*, 2022-Ohio-4562, ¶ 26. This being so, “[t]he Ohio Supreme Court has held that a self-defense claim is not an element of the offense that must be proven by the state and, therefore, it is not subject to review for sufficiency of evidence.” *State v. Warth*, 2023-Ohio-3641, ¶ 37 (1st Dist), citing *Messenger* at ¶ 24-27. Thus, we overrule Mr. Stewart’s sufficiency assignment of error and evaluate his conviction solely through a manifest-weight lens.

When presenting self-defense as an affirmative defense, “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.” *Messenger* at ¶ 25. Moreover, “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.” *Id.*

Once a defendant presents evidence that tends to support self-defense, the burden of persuasion shifts and “requires the state to disprove at least one of the elements of self-defense . . . beyond a reasonable doubt.” *State v. Smith*, 2020-Ohio-4976, ¶ 49 (1st Dist.), citing *State v. Petway*, 2020-Ohio-3848, ¶ 55 (3d Dist.). “Unlike the burden of production, which concerns a party’s duty to introduce *enough* evidence on an issue, the burden of persuasion represents a party’s duty to convince the factfinder to view the facts in a favorable manner to them.” (Emphasis in original.) *State v. Mitchell*, 2023-Ohio-2604, ¶ 15 (1st Dist.), citing *Messenger*, 2022-Ohio-4562, at ¶ 17.

Under the manifest-weight framework, “[i]n order for us to second-guess the factfinder's adjudication of conflicting evidence, which we reserve for only the most

exceptional circumstances, we must conclude that the evidence weighs heavily against [the] conviction.” *Id.*, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387-388 (1997). Our responsibility is also to determine if “the factfinder disregarded or overlooked compelling evidence that weighed against conviction.” *State v. Gibson*, 2023-Ohio-1640, ¶ 10 (1st Dist.), citing *Thompkins* at 387-388.

Finally, “[w]e review de novo whether the trial court applied the proper legal standard and whether” the evidence presented was sufficient to shift the burden of persuasion to the state. *State v. Ross*, 2024-Ohio-3117, ¶ 72 (1st Dist.), citing *State v. Williams*, 2020-Ohio-5245, ¶ 5 (1st Dist.).

With all of this as backdrop, the trial court found that Mr. Stewart never truly argued any privileged use of force in his own defense. In other words, he failed to carry his initial burden. And, after reviewing the record at hand, we agree with the trial court here. Mr. Stewart insisted that he did not mean to hit his wife and that any contact with her face was inadvertent. This testimony undermines the crux of a self-defense argument because the use of force must be intentional and willful, not merely accidental. *See State v. Wilson*, 2024-Ohio-776, ¶ 18, quoting *State v. Champion*, 109 Ohio St. 281, 286-287 (1924) (“For nearly 100 years, [the Ohio Supreme Court] has held that self-defense ‘presumes intentional, willful use of force *to repel force or escape force.*’” (Emphasis in original.)).

Because Mr. Stewart never met his burden to present evidence tending to support that he acted in self-defense, the burden never shifted to the State, and we cannot hold that his conviction was against the manifest weight of the evidence. Based on the foregoing, we overrule both of his assignments of error and affirm the trial court’s judgment.

OHIO FIRST DISTRICT COURT OF APPEALS

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on 1/10/2025 per order of the court.

By: _____
Administrative Judge