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

STATE OF OHIO,	:	APPEAL NO. C-250639 TRIAL NO. C/25/CRB/16771
Plaintiff-Appellee,	:	
vs.	:	
JAMES SMITH,	:	*JUDGMENT ENTRY*
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/2/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge

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STATE OF OHIO,	:	APPEAL NO. C-250639 TRIAL NO. C/25/CRB/16771
Plaintiff-Appellee,	:	
vs.	:	
JAMES SMITH,	:	*O P I N I O N*
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 2, 2026

Connie Pillich, Hamilton County Prosecuting Attorney, and *Paula E. Adams,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Brian T. Goldberg, for Defendant-Appellant.

BOCK, Judge.

{¶1} Defendant-appellant James Smith appeals his misdemeanor-assault conviction and contends, in a single assignment of error, that his conviction was contrary to the manifest weight of the evidence because the evidence proved that he struck the victim in self-defense.

{¶2} We overrule his assignment of error for two reasons. First, Smith has not demonstrated that the trial court lost its way when it believed the victim's testimony. Second, Smith limits his arguments to the at-fault element of his self-defense claim. But the elements of a self-defense claim are cumulative, the trial court's findings implicate the reasonable-belief and reasonable-force elements of Smith's self-defense claim, and Smith has not challenged the trial court's findings under these elements. We hold that Smith's conviction is not contrary to the weight of the evidence.

{¶3} We affirm the trial court's judgment of conviction.

I. Factual and Procedural History

{¶4} The State charged Smith with one count of misdemeanor assault in violation of R.C. 2903.13.

A. The undisputed facts

{¶5} At Smith's bench trial, the evidence established the following undisputed facts. The victim and Smith share a mutual friend, D.J. One night in September 2025, the victim was at D.J.'s house when D.J. invited Smith and others for a small gathering. Smith and his friends, including K.M. and J.J., arrived sometime later. At one point, D.J. began arguing with his partner. After that argument turned violent, the victim intervened and tried to break up that fight. D.J.'s partner left the house. Smith's friends, K.M. and J.J., went outside. Next, the victim told Smith to

leave. Smith refused. Smith and the victim fought inside the home, and the fight spilled outside to the front lawn.

B. The victim's account

{¶6} The victim recalled his attempts to calm D.J. down after D.J.'s fight with his partner. The victim noticed that Smith remained in D.J.'s home even though Smith's friends appeared to be leaving. So, the victim told Smith that the night had become "too rowdy" and it was "time for everybody to go." According to the victim, Smith "started getting aggressive." The victim testified, "Next thing I know, I'm getting punched in the face by [Smith]." After a brief pause to exchange words with one another, Smith "start[ed] coming at [the victim] again." The victim and Smith fought, which spilled into the front yard.

{¶7} The victim denied making any confrontational or threatening gestures to Smith to prompt Smith's first strike. But the victim acknowledged that he tried to defend himself against Smith. The scuffle left the victim with cuts and bruises on his face, and a cut on his foot. The evidence includes photographs of the victim's injuries. The investigating officer testified he noticed the victim's injuries when he reported the incident to the police the next day.

C. Smith's friends' accounts

{¶8} To prove his self-defense claim, Smith called K.M. and J.J. to testify. K.J., Smith's longtime friend, recalled walking outside of the house after the confrontation between D.J. and his partner. Indeed, K.M. wanted both J.J. and Smith to leave the party at that point, but Smith insisted on staying. K.M. described the start of Smith's scuffle with the victim. K.M. testified that she watched, through a window, as the victim attacked Smith first.

{¶9} J.J. testified that he was in front of the house and could see Smith's and the victim's shadows through a window. While J.J. did not see the start of the fight between Smith and the victim, J.J. recalled that the victim revived the fight with Smith in front of the house.

D. The trial court found Smith guilty

{¶10} The trial court found that the State disproved Smith's self-defense claim because the victim simply told Smith to leave and, considering the size discrepancy between "a big man" like Smith and a "slight" man like the victim, "the force was unreasonable under the circumstances." The trial court sentenced Smith to one day in jail, with credit for one day served.

II. Analysis

A. Smith's appeal is not moot

{¶11} As an initial matter, the State argues that Smith's appeal is moot because he has already served his sentence and he did not demonstrate that his sentence was served involuntarily or will result in an ongoing collateral disability.

{¶12} This court lacks jurisdiction to consider moot appeals. *See State v. Horton,* 2025-Ohio-5330, ¶ 8 (1st Dist.). For misdemeanor convictions, appeals are moot where a defendant has voluntarily served the sentence and will suffer no collateral disability or loss of civil rights. *Id.* at ¶ 4. A completed sentence was involuntarily served if the defendant "neither acquiesced in the judgment nor abandoned the right to appellate review." *City of Cleveland Hts. v. Lewis*, 2011-Ohio-2673, ¶ 25. Usually, a defendant must seek "a stay of execution of sentence from the trial court for the purpose of preventing an intended appeal from being declared moot." *Id.* at ¶ 23.

{¶13} But here, Smith was sentenced to time served. We have explained that a defendant sentenced to time served for a misdemeanor conviction has "no opportunity to ask the court to stay his sentence or otherwise object to his sentence before he served it." *State v. Coffman*, 2024-Ohio-1182, ¶ 9 (1st Dist.). In *Coffman,* we held that a one-day sentence with credit for one day of time served fails to demonstrate acquiescence by the defendant to moot an appeal of a misdemeanor conviction. *Id.* So too here. Smith had no opportunity to seek a stay of execution and there is nothing in the record to suggest acquiescence on his part. So, Smith's appeal is not moot.

B. Assignment of error: Smith's conviction was not against the weight of the evidence

{¶14} Smith argues that his assault conviction is against the manifest weight of the evidence. In his view, he struck the victim in self-defense and was not responsible for the affray.

{¶15} Smith appears to argue that the State failed to disprove an element of his self-defense claim. We "conduct a manifest weight analysis to determine whether the State met its burden of persuasion." *State v. Harris*, 2025-Ohio-5438, ¶ 17 (1st Dist.). We may reverse a conviction as against the manifest weight of the evidence only if we conclude, after an independent review of the record, that 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""" and the evidence weighs heavily against the conviction. *State v. Reillo*, Slip Opinion No. 2026-Ohio-2701, ¶ 26, quoting *State v. Brown*, 2025-Ohio-2804, ¶ 30, quoting *State v. Thompkins* 1997-Ohio-52, ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983).

{¶16} Nondeadly force may be used in self-defense if (1) the defendant was not at fault in creating the situation giving rise to the affray, (2) the defendant honestly

and reasonably believed that he was in imminent danger of bodily harm, and (3) his only option to protect himself from that imminent danger was using reasonably-necessary force to defend himself. *See State v. Pitts,* 2026-Ohio-2306, ¶ 21 (1st Dist.).

{¶17} Smith has not demonstrated that the trial court clearly lost its way when it rejected his self-defense claim. Smith devotes his entire assignment of error to challenging the trial court's alleged finding that the State disproved the at-fault element. He argues that the evidence proved that the victim was at fault because the victim instructed Smith to leave the party and, based on K.M.'s and J.J.'s testimony, the victim struck Smith first. But that framing assumes that K.M. and J.J. were more credible than the victim, an assumption that is at odds with the trial court's findings.

{¶18} Generally speaking, "we defer to the [trier of fact's] credibility finding as it is in the 'superior position to decide which testimony to believe and which to disregard.'" *State v. Wolfert*, 2026-Ohio-2850, ¶ 52 (1st Dist.), quoting *Reillo*, 2026-Ohio-2701, at ¶ 32. But a conviction may still be against the weight of the evidence even with that deference to the trier of fact's credibility findings. *See Reillo* at ¶ 31. For example, a trier of fact may still lose its way, despite our deferential review, in cases where "internally contradictory testimony as to material facts, direct impeachment, or fantastical testimony clearly undermines a witness's credibility on a cold record." *Id.*; *see State v. Rose*, 2024-Ohio-5689, ¶ 24 (1st Dist.). While Smith points out that the victim "had the motivation to lie, as he admitted to fighting with Mr. Smith," Smith has not explained how the victim's testimony about the fight was internally contradictory, directly impeached, or fantastical.

{¶19} And even if the trial court's reference to the victim "simply telling Mr. Smith to leave" implicates the at-fault element, the trial court found that the State disproved the reasonable-belief and reasonable-force elements of Smith's self-defense

claim. That matters because "'the elements of self-defense are cumulative.'" *State v. Gatewood*, 2021-Ohio-3325, ¶ 72 (1st Dist.), quoting *State v. Jackson*, 22 Ohio St.3d 281, 284 (1986). In other words, the State may secure a conviction by disproving only "one of the elements of self-defense beyond a reasonable doubt." *Id.* at ¶ 72.

{¶20} Start with Smith's fear of danger. The use of force in self-defense must be based on a defendant's "honest belief" of imminent danger of bodily harm. *State v. Mitchell*, 2023-Ohio-2604, ¶ 24 (1st Dist.). The State may disprove a claim of self-defense by showing that the defendant's "belief was not objectively reasonable or that he did not have an honest subjective belief" of imminent danger. *Id.* at ¶ 26. Here, the trial court found that "there was no danger" because the victim was simply instructing Smith to leave the house. By finding that "there was no danger," the trial court inherently found that any belief of imminent bodily harm was objectively unreasonable.

{¶21} Now turn to whether force was reasonably necessary. Self-defense "is only available if ""the force used to repel the danger was not more than the situation reasonably demanded."'" *State v. Rose*, 2024-Ohio-5689, ¶ 31 (1st Dist.), quoting *State v. Johnson*, 2022-Ohio-2577, ¶ 15 (8th Dist.), quoting *State v. Zafar*, 2020-Ohio-3341, ¶ 52-53 (10th Dist.), quoting *State v. Johnson*, 2009-Ohio-3500, ¶ 12 (6th Dist.). This means that force must be objectively necessary and reasonable under the circumstances. *Id.* The trial court found that Smith's "force was unreasonable under these circumstances." Later, it pointed out that the victim "is slight in stature" and "Smith is a big man."

{¶22} So even if Smith's at-fault argument had succeeded, the reasonable-belief and reasonable-force elements are alternate findings made by the trial court to justify his conviction. But Smith does not challenge the trial court's findings under

these elements. As a reviewing court, we "decide cases based on issues raised by the parties." *Epcon Communities Franchising, L.L.C. v. Wilcox Dev. Group, L.L.C.*, 2024-Ohio-4989, ¶ 15. Indeed, it is well established that "an appellate court will not create an argument in support of an assignment of error where an appellant fails to develop one." *Fontain v. Sandhu*, 2021-Ohio-2750, ¶ 16 (1st Dist.).

{¶23} We hold that Smith's conviction is not against the manifest weight of the evidence and overrule the assignment of error.

III. Conclusion

{¶24} We overrule Smith's assignment of error and affirm the trial court's judgment.

Judgment affirmed.

KINSLEY, P.J., and **CROUSE, J.,** concur.