[Cite as *Fairview Park v. Peah*, 2021-Ohio-2685.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF FAIRVIEW PARK, :

Plaintiff-Appellee, :

No. 110128

v. :

SOLOMON Q. PEAH, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 5, 2021

Criminal Appeal from the Rocky River Municipal Court
Case No. 19 CRB 1444

Appearances:

Timothy J. Riley, City Law Director, and John T. Castele, Assistant Law Director, *for appellee*.

Patituce & Associates, L.L.C., and Joseph C. Patituce, *for appellant*.

LARRY A. JONES, SR., J.:

{¶ 1} Defendant-appellant Solomon Peah ("Peah") appeals from his domestic-violence conviction that was rendered after a trial before a magistrate of the Rocky River Municipal Court. For the reasons that follow, we affirm.

Factual and Procedural History

{¶ 2} On July 7, 2019, Peah was arrested in Fairview Park and charged with domestic violence in violation of R.C. 2919.25(A), a misdemeanor of the first degree. The victim was Peah's live-in girlfriend.

{¶ 3} The matter proceeded to a trial before the magistrate where the following evidence was presented. The victim testified that she had lived with Peah for four years, their last residence being in Fairview Park where the incident occurred. According to the victim, on the day of the incident, July 7, 2019, she arrived home after work, and she and Peah continued an argument that had started on July 4 or July 5.

{¶ 4} The victim testified that while she was sitting on the bed she and Peah were yelling at each other and as she got up to leave the room, Peah grabbed her by the arm, grabbed her neck with his other hand, and forcibly pushed her to the floor. The victim could not move because Peah was holding her down with her arm behind her back and his hand on the back of her neck. She identified an injury on her forehead in pictures presented to her, stating that the injury was not present prior to her being pushed to the floor by Peah. According to the victim, she was five-foot tall and 100 pounds and Peah was about six foot two or three and 230 pounds.

{¶ 5} The police were called to the scene by the victim and she provided a statement. She denied hitting Peah, but did suggest that it was possible they were

throwing pillows at each other. She testified that the injury she suffered hurt, but that she did not need medical attention.

{¶ 6} On cross-examination, the victim admitted that she was angry and that she had a temper and that she may have thrown pillows at Peah, but maintained that she did not hit him. She testified that she took pictures of her arm the following day, when bruising appeared, but did not give those pictures to police.[1] She testified that the bruises were painful the next day and that she had not noticed pain in her arm the night before, but only when she woke up in the morning. The photographs were admitted over defense counsel's objection. She denied tripping over a stool and that her injuries were not caused by tripping over a stool, stating that she clearly remembered Peah pushing her to the floor.

{¶ 7} One of the responding officers, Stephen Barnie ("Officer Barnie"), testified. Peah told Officer Barnie that he and the victim had a verbal argument over a car window being left down and it turned into a physical altercation with both falling to the floor and the victim hitting her head on a chair. Peah further told the officer that the victim was mad at him and threw a pillow at him. Later, Peah acknowledged that he held the victim down on the floor; he told Officer Barnie that he did that because she was so angry, and he wanted to hold her down to calm her down. Officer Barnie identified the photographs of the injury to the

[1]The victim took the pictures on her iPhone that automatically date- and time-stamped them.

victim's head, describing it as an abrasion or contusion as though her head hit something rough.

{¶ 8} Peah provided a written statement for Officer Barnie. In the statement, Peah wrote that the victim threw a pillow at him, they both fell to the ground while passing each other in the bedroom and she hit her head. Further, according to Peah's written statement, as he started to get up, the victim started kicking him and so he held her down to calm her down.

{¶ 9} Officer Barnie checked Peah for injuries and marks and did not observe any. Officer Barnie testified that Peah appeared "amped up," but he did not appear to be angry and the officer did not feel threatened by him.

{¶ 10} Meanwhile, the other responding officer, Michael Thompson ("Officer Thompson"), dealt with the victim. Officer Thompson described the victim as "frantic, breathing heavily and scared." The victim told the officer that she was afraid of Peah. She had an obvious injury to her forehead, and Officer Thompson took pictures of the injury. The officer described the injury as an abrasion. Officer Thompson testified that he remembered the victim telling him that she may have hit her head on a stool or chair.

{¶ 11} The magistrate found Peah guilty, and the entry was journalized on October 21, 2019. The trial court sentenced him to a 180-day suspended jail term and placed him on one year of community control sanctions; that entry was journalized on November 17, 2019.

{¶ 12} In December 2019, Peah appealed to this court, but the appeal was dismissed because the trial court had not adopted the magistrate's decision and, thus, there was no final, appealable order. *Fairview Park v. Peah*, 8th Dist. Cuyahoga No. 109286, Motion No. 524294 (Dec. 11, 2019). Thereafter, while the case was on remand, Peah filed a motion to vacate the magistrate's decision and objections to the magistrate's decision in the municipal court. The motion to vacate was denied, the objections were overruled, and the trial court adopted the magistrate's decision. A second appeal to this court was again dismissed for lack of a final, appealable order. *Fairview Park v. Peah*, 8th Dist. Cuyahoga No. 109348, Motion No. 539310 (June 17, 2020). After the trial court issued a final, appealable order, Peah filed this appeal, and assigns the following six assignments of error for our review:

> Assignment of Error 1: The trial court erred in denying appellant's motion to vacate magistrate's decision because appellant did not consent to magistrate conducting trial pursuant to Crim.R. 19(C)(1)(h).
>
> Assignment of Error 2: Appellant's conviction must be reversed because his matter was improperly tried to a magistrate without a knowing, intelligent, and voluntary waiver of the right to have the matter tried to a judge.
>
> Assignment of Error 3: It was error to admit photographs over trial counsel's objection that were never produced in discovery.
>
> Assignment of Error 4: Trial counsel's assistance was ineffective when he failed to move for an acquittal pursuant to Crim.R. 29 at the close of the defendant's case as appellant articulated valid self-defense facts and the government failed to prove each element beyond a reasonable doubt.

> Assignment of Error 5: The evidence was insufficient as a matter of law to find appellant guilty of domestic violence where the injury was a slight "rug burn."
>
> Assignment of Error 6: The evidence was insufficient as a matter of law to find appellant guilty of domestic violence where prosecution failed to prove beyond a reasonable doubt that appellant did not act in self-defense.

Law and Analysis

Objections to Magistrate's Decision

{¶ 13} As an initial matter, we consider the timeliness of Peah's objections. The magistrate's journal entry of the finding of guilt at trial was journalized by the Rocky River Municipal Court Clerk's Office on October 21, 2019. Included in that entry is the following notice:

> A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Crim.R. 19(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Crim.R. 19(D)(3)(b).

{¶ 14} After sentencing, the magistrate's journal entry of conviction and sentence was filed and journalized by the Rocky River Municipal Court Clerk's Office on November 7, 2019. That entry also contained the above-mentioned notice. Further, the magistrate specifically explained to Peah at the sentencing hearing that any objections would have to first be filed in the trial court "within the rule as required." Under Crim.R. 19(D)(3)(b)(i), the time period in which to file objections to the magistrate's decision is 14 days. Peah filed his objections on December 12, 2019, (after this court remanded the case the first time) that was

outside of the 14-day time limit. Nonetheless, in the interest of justice, we consider the merits of the issues raised on appeal and find them to be without merit.

Trial to Magistrate

{¶ 15} In his first two assignments of error, Peah contends that the trial court erred in denying his motion to vacate the magistrate's decision. He contends that he did not consent to the magistrate conducting the trial pursuant to Crim.R. 19(C)(1)(h) and that he did not knowingly, intelligently and voluntarily waive his rights to have his case tried by a judge.

{¶ 16} Crim.R. 19(C)(1)(h) that governs trials by magistrates, provides as follows:

> (C) Authority.
>
> (1) Scope. To assist courts of record and pursuant to reference under Crim.R. 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:
>
> * * *
>
> (h) Conduct the trial of any misdemeanor case that will not be tried to a jury. If the offense charged is an offense for which imprisonment is a possible penalty, the matter may be referred only with unanimous consent of the parties in writing or on the record in open court.

{¶ 17} Peah was charged with violating R.C. 2919.25(A), a misdemeanor of the first degree. R.C. 2929.24(A)(1) provides, in general, that if the sentencing court imposes a jail term for a misdemeanor of the first degree, it shall impose a jail term of "not more than 180 days." Thus, imprisonment was a possible penalty in this case.

{¶ 18} The record demonstrates that the magistrate obtained a jury waiver for the matter to proceed to trial before the judge presiding over the case. The magistrate did not obtain written consent from either party to have the case tried to the magistrate, however. The record also demonstrates that the court's October 21, 2019 journal entry indicates "Trial Had Before Magistrate" but the box that would indicate "Trial Before Judge Waived" is blank. According to Peah, this is further evidence that he did not knowingly and intelligently waive his right to have his case tried to a jury. But Peah has offered nothing more than conclusory statements that the waiver was not knowingly, intelligently, and voluntarily made.

{¶ 19} We find them to be without merit.

{¶ 20} We likewise find Peah's contention that he did not agree to have his case tried to the magistrate because no agreement was placed on the record stating such to be without merit. Peah cites *State v. Kemper*, 12th Dist. Butler No. CA2012-04-079, 2012-Ohio-5958, in support of his contention that a waiver of trial by judge must be consented to by all parties in writing or in open court.

{¶ 21} The defendant in *Kemper* challenged his conviction that was rendered by a magistrate claiming that he did not consent in writing to the matter being heard by a magistrate. However, the record demonstrated that the defendant signed a form titled "CONSENT TO HAVING MAGISTRATE HEAR CASE." (Capitalization sic.) *Id.* at ¶ 34. Nonetheless, the Twelfth District addressed the defendant's contention that his consent was not voluntary at the time he signed the waiver, stating:

> Kemper now argues that he did not voluntarily sign the consent form, but signed the form after being instructed to do so by the magistrate. However, the record contains the signed consent form and no other indication that Kemper signed the form only because the magistrate instructed him to do so. Moreover, *Kemper was represented by counsel, and did not object to the magistrate hearing the case until he filed objections after the magistrate had already reached a decision. Had Kemper not wanted to have his case decided by the magistrate, or had Kemper signed the consent form only because the magistrate instructed him to do so, he would have had the opportunity to challenge the magistrate's authority to hear the case according to Crim.R. 19 before the magistrate heard the case. He did not, and instead, proceeded to trial with the magistrate presiding.* Kemper's third assignment of error is overruled.

(Emphasis added.) *Id.* at ¶ 35.

{¶ 22} Likewise, here, Peah was represented by counsel at the trial and did not lodge an objection at that time to the magistrate trying his case. In fact, although there was no written agreement to having the magistrate try his case, he acquiesced to it on the record in open court. Specifically, the magistrate told Peah, "I do think that you may want to go back and speak with your counsel and have him speak with the Prosecutor to determine whether or not you want to try to resolve this without a trial or if you want a trial. But I will need you to sign a waiver of a jury trial if *you want me to hear this case*." (Emphasis added.) Tr. 7. Peah indicated that he understood the above, as well as understood that the magistrate was "not trying to force [him] into anything," and after a brief consultation with his attorney, Peah agreed to proceed to trial before the magistrate. *Id.* at 7-8.

{¶ 23} Although it is "best practices" for courts to obtain consent in writing to parties having their case tried to a magistrate, on this record, we find no error.

{¶ 24} The first and second assignments of error are overruled.

Admission of Victim's Photographs

{¶ 25} For his third assigned error, Peah asserts that the photographs of the victim's arm presented at trial should not have been admitted into evidence because they were not made available to defense counsel during discovery. We review evidentiary rulings for an abuse of discretion. *Renfro v. Black*, 52 Ohio St.3d 27, 33, 556 N.E.2d 150 (1990).

{¶ 26} As mentioned, it was not until the victim's cross-examination that it was discovered that she had taken photographs of bruising to her arm the morning after the day of the incident. The victim explained that she took the photographs the day after the incident when she woke up and her arm hurt. She admitted that she never shared these photographs or told anyone that she had them until trial.

{¶ 27} In *State v. Keenan*, 2013-Ohio-4029, 998 N.E.2d 837 (8th Dist.), cited by Peah, this court summarized the Supreme Court of Ohio's decision in *State v. Parsons*, 6 Ohio St.3d 442, 453 N.E.2d 689 (1983), regarding sanctions for discovery violations:

> In *Parsons*, the Ohio Supreme Court established a three-prong test governing a trial court's exercise of discretion in imposing a sanction for the prosecution's discovery violation: (1) whether the failure to disclose was a willful violation of Crim.R. 16; (2) whether foreknowledge of the undisclosed material would have benefitted the accused in the preparation of a defense; and (3) whether the accused

> was prejudiced. *Id.* at syllabus; *see also State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864.

Keenan at ¶ 24.

{¶ 28} There was no willful failure to disclose the evidence by the city in this case, and thus, no Crim.R. 16 violation. The record shows that no one other than the victim knew of the existence of the photographs; she did not provide the police with the pictures or even reveal their existence until asked by defense counsel on cross-examination. Therefore, Peah has failed to demonstrate the first prong of the *Parsons* test.

{¶ 29} In regard to the second prong of the test — whether Peah's knowledge of the photographs would have benefitted him in the preparation of a defense — Peah has neither alleged nor demonstrated how the photographs would have helped him in the preparation of his defense. And similarly, Peah has not demonstrated that he was prejudiced by not having the photographs prior to trial.

{¶ 30} Moreover, even if the trial court had abused its discretion in admitting the photographs, the case did not rest solely on them. Rather, the other injury the victim suffered was to her head and that injury alone was sufficient to sustain the domestic-violence conviction.

{¶ 31} In light of the above, the trial court did not abuse its discretion by allowing the photographs of the injuries to the victim's arm to be admitted into evidence.

{¶ 32} The third assignment of error is overruled.

Ineffective Assistance of Counsel: Failure to Make a Crim.R. 29 Motion for Judgment of Acquittal

{¶ 33} For his fourth assigned error, Peah contends that his trial counsel was ineffective because counsel did not make a Crim.R. 29 motion for judgment of acquittal. In his fifth and sixth assignments of error, Peah contends that the evidence was not sufficient to support an injury to the victim (fifth assignment of error), or the domestic-violence conviction generally because he acted in self-defense (sixth assignment of error).

{¶ 34} Reversal of a conviction for ineffective assistance of counsel requires a defendant to show that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. *State v. Smith*, 89 Ohio St.3d 323, 327, 731 N.E.2d 645 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Defense counsel's performance must fall below an objective standard of reasonableness to be deficient in terms of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989). Moreover, the defendant must show that there exists a reasonable probability that, were it not for counsel's errors, the results of the proceeding would have been different. *State v. White*, 82 Ohio St.3d 16, 23, 693 N.E.2d 772 (1998).

{¶ 35} In evaluating a claim of ineffective assistance of counsel, a court must give great deference to counsel's performance. *Strickland* at 689. "A reviewing court will strongly presume that counsel rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment." *State v. Pawlak*, 8th Dist. Cuyahoga No. 99555, 2014-Ohio-2175, ¶ 69.

{¶ 36} "Counsel's failure to make a Crim.R. 29 motion for acquittal is not ineffective assistance of counsel where such a motion would have been fruitless." *State v. Scott*, 6th Dist. Sandusky No. S-02-026, 2003-Ohio-2797, ¶ 20. "While it is customary for defense counsel to make a motion for acquittal as a matter of course to test the sufficiency of the state's evidence, the failure to follow that course of action did not mean the performance of appellant's trial counsel fell below a reasonable standard of representation." *State v. Reed*, 6th Dist. Wood No. WD-97-031, 1998 Ohio App. LEXIS 715, 6 (Feb. 27, 1998).

{¶ 37} Pursuant to Crim.R. 29(A), a court "shall order the entry of the judgment of acquittal of one or more offenses * * * if the evidence is insufficient to sustain a conviction of such offense or offenses." Because a Crim.R. 29 motion questions the sufficiency of the evidence, "[w]e apply the same standard of review to Crim.R. 29 motions as we use in reviewing the sufficiency of the evidence." *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 38} Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Sufficiency is a test of adequacy. *Id.* We construe the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable

doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 39} Peah was charged with domestic violence under R.C. 2919.25(A), which provides that, "No person shall knowingly cause or attempt to cause physical harm to a family or household member." In regard to the "knowingly" requirement, R.C. 2901.22(B) provides that:

> (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. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

{¶ 40} "Physical harm to persons" means "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3).

{¶ 41} Sufficient evidence supported the conviction. The record demonstrates that the victim and Peah resided together at the time of the incident. On the day in question, the victim arrived home after work and she and Peah continued an argument that had started a few days prior. According to the victim, while she was sitting on the bed, she and Peah were yelling at each other and as she got up to leave the room, Peah grabbed her by the arm, grabbed her neck with his other hand, and forcibly pushed her to the floor. The victim was five-foot tall and 100 pounds and Peah was about six foot two or three and 230 pounds. The victim

could not move because Peah was holding her down with her arm behind her back and his hand on the back of her neck. She identified an injury on her forehead in pictures presented by her stating that those injuries were not present prior to her being pushed to the floor by Peah.

{¶ 42} One of the responding officers, Officer Thompson, described the victim as "frantic, breathing heavily and scared." The victim told the officer that she was afraid of Peah. She had an obvious injury to her forehead that Officer Thompson described as an abrasion. Although the victim did not seek medical treatment, she testified that the injury she suffered hurt. Further, the following day, she had bruising on her arms and described that as painful, too.

{¶ 43} The above-mentioned testimony was sufficient to establish all of the elements of a domestic-violence conviction under R.C. 2919.25(A), including that the victim suffered an injury. This court has held that "'[a] defendant may be found guilty of domestic violence even if the victim sustains only minor injuries.'" *Cleveland v. Amoroso*, 8th Dist. Cuyahoga No. 100983, 2015-Ohio-95, ¶ 31, quoting *State v. Bionski*, 125 Ohio App.3d 103, 114, 707 N.E.2d 1168 (9th Dist.1997). Any physical harm is sufficient. *Amoroso* at *id.*, citing *Bionski* at *id.* A Crim.R. 29 motion for judgment of acquittal would have been fruitless; counsel was not ineffective for failing to make the motion.

{¶ 44} Counsel was likewise not ineffective for failing to make a Crim.R. 29 motion on the ground of self-defense. Prior to March 28, 2019, Ohio law deemed self-defense an affirmative defense, requiring a defendant to prove the elements of

self-defense by a preponderance of the evidence. *See State v. Martin*, 21 Ohio St.3d 91, 93, 488 N.E.2d 166 (1986). Now, however, following amendments to R.C. 2901.05 that were effective March 28, 2019, a defendant no longer bears the burden of establishing the elements of self-defense by a preponderance of the evidence. R.C. 2901.05(B)(1). Instead, the self-defense statute now "place[s] the burden on the prosecution to disprove at least one of the elements of self-defense beyond a reasonable doubt." *State v. Carney*, 10th Dist. Franklin No. 19AP-402, 2020-Ohio-2691, ¶ 31. Specifically, 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 the force in self-defense, defense of another, or defense of that person's residence, the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of that person's residence, as the case may be.

{¶ 45} Thus, under the current version of R.C. 2901.05(B)(1), the state is required

> to disprove self-defense by proving beyond a reasonable doubt that [the defendant] (1) was at fault in creating the situation giving rise to the affray, OR (2) did not have a bona fide belief that he [or she] was in imminent danger of death or great bodily harm for which the use of deadly force was his [or her] only means of escape, OR (3) did violate a duty to retreat or avoid the danger.

Carney at id.

{¶ 46} The Tenth Appellate District has recently considered, given the change in the self-defense law, whether a challenge to it under a sufficiency of the evidence is appropriate and has held that it is not. *See State v. Messenger*, 10th

Dist. Franklin No. 19AP-879, 2021-Ohio-2044, ¶ 37-44. In sum, the court reasoned that,

> [u]nder the current version of R.C. 2901.05, while the burden of proof for the affirmative defense of self-defense has shifted to the state, the burden of production for all affirmative defenses, including self-defense, remains with the defendant. *See State v. Parrish*, 1st Dist. [Hamilton] No. C-190379, 2020-Ohio-4807, ¶ 14 ("the recent changes to R.C. 2901.05 * * * [do] not change the accused's burden of production with respect to self-defense"); *State v. Petway*, 11th Dist. [Lake] No. 2019-L-124, 2020-Ohio-3848, ¶ 55, 156 N.E.3d 467 ("[u]nder the amended statute, the defendant retains the burden of production, which is the burden of producing evidence that 'tends to support' that the defendant used the force in self-defense," while "[t]he burden of persuasion has been shifted to the prosecution to disprove at least one of the elements of self-defense beyond a reasonable doubt"). Thus, if the state does not bear the burden of production on self-defense, it follows that sufficiency of the evidence is not the proper framework to review whether the state proved the absence of self-defense.

Messenger at ¶ 44.[2]

{¶ 47} The standard of review for a manifest-weight challenge is summarized in *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983), as follows:

> The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

(Citations omitted.) *Id.* at 175.

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[2]*See Cleveland v. Williams*, 8th Dist. Cuyahoga No. 81369, 2003-Ohio-31, ¶ 10, holding under the former self-defense law that a sufficiency of the evidence review of self-defense was not appropriate.

{¶ 48} The power to reverse a judgment of conviction as against the manifest weight of the evidence must be exercised with caution and in only the rare case in which the evidence weighs heavily against the conviction. *Martin* at *id*.

{¶ 49} The evidence did not tend to support that Peah may have acted in self-defense. The victim admitted that she may have thrown pillows at Peah, but denied ever hitting him. Indeed, in his statement to the police, Peah never indicted that he was attacked by the victim or that he feared he was in danger of bodily harm by her. Rather, he said he held her down to calm her.

{¶ 50} For the reasons discussed above, trial counsel was not ineffective by not making a Crim.R. 29 motion based on self-defense. Further, the weight of the evidence did not support a self-defense theory.

{¶ 51} In light of the above, the fourth, fifth, and sixth assignments of error are overruled.

{¶ 52} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Rocky River Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, A.J., and
SEAN C. GALLAGHER, J., CONCUR