

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

STATE OF OHIO,	:	APPEAL NO. C-190635
Plaintiff-Appellee,	:	TRIAL NO. B-1900997
vs.	:	<i>JUDGMENT ENTRY.</i>
LISA PHILLIPS,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist Loc.R. 11.1.1.

Defendant-appellant Lisa Phillips appeals her felonious-assault conviction, stemming from allegations that Phillips swung an aluminum baseball bat at the victim's head, fracturing her jaw. The jury found Phillips guilty, and the trial court sentenced Phillips to three years of community control.

In her first assignment of error, Phillips argues that her conviction was based on insufficient evidence and was against the manifest weight of the evidence. Subsumed within her assignment, Phillips argues that the evidence shows she acted in self-defense.

The trial court instructed the jury in accordance with R.C. 2901.05 that the state must prove beyond a reasonable doubt that Phillips did not use force in self-defense. *See* R.C. 2901.05(B)(1). Because R.C. 2901.05(B)(1) applied, the state had to prove beyond a reasonable doubt one of the following:

(1) the defendant was at fault in creating the situation giving rise to the affray in which the force was used or (2) the defendant did not have reasonable grounds to believe or an honest belief that he or she was in imminent danger of bodily harm or (3) the defendant used more force than was reasonably necessary to defend against the imminent danger of bodily harm.

State v. Staats, 5th Dist. Stark No. 2019CA00181, 2021-Ohio-1325, ¶ 28, citing *State v. Jacinto*, 2020-Ohio-3722, 155 N.E.3d 1056, ¶ 46 (8th Dist.); *see State v. Smith*, 1st Dist. Hamilton No. C-190507, 2020-Ohio-4976, ¶ 50-51.

The evidence presented by the state at trial showed Phillips as the main aggressor. The state presented an independent witness, the school-bus driver, who corroborated the victim's story that Phillips had started the affray when she came out of her home, screaming, and flicked a lit cigarette at the victim's car. The independent witness lends credibility to the victim's story, and discredits Phillips's testimony that the victim had actually started the affray by trying to hit Phillips with her car.

Even if Phillips's testimony were to be believed, the state proved beyond a reasonable doubt that Phillips used more force than reasonably necessary for the situation. According to Phillips, the victim had tried to hit Phillips with her car and then had come to a stop. At that point, Phillips allegedly felt threatened, not by the

car, but by the can of mace in the victim's hand—even though the victim was seated in her car and Phillips was standing outside of the car. Phillips's version of events does not place her in fear of serious bodily harm at the time she swung the bat at the victim.

We determine that the evidence was sufficient to sustain Phillips's felonious-assault conviction, and her conviction was not against the manifest weight of the evidence. *See State v. Jenks*, 61 Ohio St.3d 259, 274, 574 N.E.2d 492 (1991); *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We overrule Phillips's first assignment of error.

In her second assignment of error, Phillips argues that she received ineffective assistance of counsel.

Phillips first argues that she received ineffective assistance of counsel because her counsel failed to object under Evid.R. 611(C) to the prosecutor's leading questioning of the victim on direct examination.

Our review of the record reveals that the vast majority of the prosecutor's questions were not leading, but instead used to clarify the victim's testimony. Defense counsel could have reasonably chosen not to object, because the objections would have either been overruled, or the prosecutor could have easily rephrased the questions had the objections been sustained, which would have created unnecessary attention and delay.

Phillips also argues that her counsel was ineffective for failing to move for an acquittal at the close of the state's case-in-chief under Crim.R. 29.

The testimony elicited by the prosecution established sufficient evidence of felonious assault. Therefore, a motion for an acquittal would have been fruitless, and

counsel was not ineffective for failing to move for an acquittal after the state's case-in-chief. *See State v. McMurray*, 12th Dist. Preble No. CA2014-08-008, 2015-Ohio-2827, ¶ 38 (counsel was not ineffective for failing to make a Crim.R. 29 motion after the state's case-in-chief where the motion would have been futile.).

We conclude that Phillips has not shown that her trial counsel's performance fell below an objective standard of reasonableness such that she was prejudiced. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). We overrule Phillips's second assignment of error.

We affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., WINKLER and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on May 26, 2021,
per order of the court _____.
Administrative Judge