**[Cite as *State v. Brennan*, 2024-Ohio-4687.]**

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO<br><br>Plaintiff-Appellee<br><br>-vs-<br><br>ERIC A. BRENNAN<br><br>Defendant-Appellant | JUDGES:<br>Hon. John W. Wise, P.J.<br>Hon. Craig R. Baldwin, J.<br>Hon. Andrew J. King, J.<br><br>Case No. 23 CAA 12 0105<br><br>O P I N I O N |

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| CHARACTER OF PROCEEDING: | Criminal Appeal from the Court of Common Pleas, Case No. 23 CRI 070363 |
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | September 26, 2024 |

APPEARANCES:

| For Plaintiff-Appellee | For Defendant-Appellant |
|---|---|
| MELISSA A. SCHIFFEL<br>PROSECUTING ATTORNEY<br>KATHERYN L. MUNGER<br>ASSISTANT PROSECUTOR<br>145 North Union Street, 3rd Floor<br>Delaware, Ohio 43015 | APRIL A. CAMPBELL<br>CAMPBELL LAW, LLC<br>545 Metro Place South<br>Suite 1001<br>Dublin, Ohio 43017 |

*Wise, P. J.*

**{¶1}** Appellant Eric A. Brennan appeals his conviction of one count of domestic violence in the Delaware County Court of Common Pleas. Appellee is the State of Ohio.

## FACTS AND PROCEDURAL BACKGROUND

*July 9, 2023 911 call to City of Delaware Police Department*

**{¶2}** Delaware City Police Officer Robert Brown was working the third-shift patrol on July 8, 2023 when he received a call from dispatch to do a "well-being" check at a home on Lake Avenue. Dispatch had received a 911 call from M.T. concerning a call he received from his daughter about 1:30 am. He heard her crying in the background and a male voice saying "[Y]ou're not so tough now; where do you think you're going; you're not going anywhere."

**{¶3}** Officer Brown knocked on the door and it was answered by J.T. wearing a shirt and a blanket covering her lower half. J.T. was crying and immediately said "[H]elp me". Officer Brown followed her into the home and heard a male voice yelling from the top of the stairs.

**{¶4}** Officer Brown separated the pair; J.T. remained in the home and the male, later identified as Eric A. Brennan, was told to wait on the front porch.

**{¶5}** Brennan told Officer Brown that he and J.T. had gotten in a fight earlier in the day, and it escalated when J.T. told Brennan she had flushed his medical marijuana down the toilet and struck him in the face.

**{¶6}** Delaware City Police Officer Eric Graham then arrived and remained on the porch to talk with Brennan while Officer Brown went inside to talk with J.T.

**{¶7}** Brennan told Officer Graham that he and J.T. had been arguing all day and that it started when J.T. flushed his medical marijuana down the toilet. "He stated that she had struck him and punched him in the face, and he had not touched her." Tr. II, 356.

**{¶8}** Officer Graham saw a red mark on the left side of Brennan's chin, but Brennan told him that was not caused by J.T.

**{¶9}** After talking with J.T., Officer Brown came outside and told Brennan he was under arrest, placed him in handcuffs and transported him to the Delaware County Jail.

**{¶10}** Meanwhile, emergency medical technicians arrived, placed J.T. in a neck brace when she complained of neck pain, and took her to Grady Memorial Hospital where she complained of a severe headache, strained neck, and aggravation of a previous shoulder injury. CT scans of the head and neck were taken because she reported that she had been choked by Brennan.

**{¶11}** After J.T. was transported, Officer Graham took photographs of the bedroom where the incidents occurred. It was in disarray - the bedroom door was off its hinges and laying on the bed; the bedroom was completely ransacked.

*Indictment*

**{¶12}** On July 13, 2023, the Delaware County Grand Jury indicted Brennan on one count of domestic violence, a violation of R.C.2919.25. Because Brennan had previously pleaded guilty to criminal mischief with the same victim, the domestic violence charge was elevated to a fourth-degree felony. Brennan was also indicted on one count of strangulation, a violation of R.C. 2903.18(B)(3).

*Trial*

**{¶13}** Brennan pleaded not guilty and prior to trial filed two relevant pleadings; first, a notice that he was claiming self-defense, and second, an amended notice announcing his intention to introduce prior specific acts in support of his claim of self-defense.

**{¶14}** Brennan's jury trial began on October 26, 2023.

*Testimony of J.T.*

**{¶15}** J.T. testified that she met Brennan on-line in April or May, 2022 and he lived in Alabama and she lived in Delaware, Ohio. Brennan moved to Ohio in August, 2022 and lived with her in her home. Because he suffered from post-traumatic stress and anxiety as a result of his time in the military, she helped him obtain a medical marijuana card.

**{¶16}** At the time, J.T. was employed as a registered nurse at a psychiatric hospital.

**{¶17}** On July 8, 2023, they were in the bedroom they shared; he was watching television and she was studying for an exam. J.T. became "annoyed" at a television program Brennan was watching which reminded her of the time he flirted with her co-worker and she demanded that he leave the bedroom. "You need to get out of this room, out of my face." Tr. I, 174.

**{¶18}** Brennan didn't move and J.T. said "I know exactly what will get you to move." Tr. I, 175. She walked around the bed, took his medical marijuana from a nightstand, went into the master bathroom and pretended to flush it down the toilet.

**{¶19}** Brennan became "enraged" screaming and yelling to give him his "medication" back. J.T. did not give it back, instead beginning to video his actions on her cell phone.

**{¶20}** According to J.T., Brennan's conduct lasted for hours. He would leave, then come back into the room and continue screaming and yelling for his medical marijuana. Brennan's cell phone was on J.T.'s cell phone plan, and she texted him while he was out of the room and demanded that he bring it to her immediately. J.T. considered it her property and wanted it back.

**{¶21}** Finally, Brennan's anger turned to physically destroying property in the bedroom including the nightstand, the mattress, and the bedroom door. Still, J.T. did not return his medical marijuana or tell him that she had just pretended to flush it down the toilet.

**{¶22}** According to J.T., Brennan then became physical with her, pulling her hair, dragging her across the room, shoving her into a closet door, and putting his hands around her neck choking her. J.T. hit Brennan in the face by his left cheek or jaw area to get him off of her.

**{¶23}** She was able to get away from Brennan, ran into the guest room, and speed dialed her father on a cell phone. She had no clothes on and grabbed a shirt. Her father called 911 and the Delaware City Police arrived.

**{¶24}** When J.T. told the police what occurred, including that she was choked by Brennan, they called an ambulance and she was transported to the hospital. Officer Graham arrived at the hospital and J.T. wrote a statement and saw a forensic nurse.

*Testimony of Brennan*

**{¶25}** Brennan testified that he suffered from post-traumatic stress disorder and anxiety and was treated at the Veteran's Administration in the psych unit for a suicide attempt about ten years ago. According to Brennan, it is difficult for him to deal with stress.

**{¶26}** Brennan described that day and said that J.T. punched him two times in the chin, and he grabbed her shirt to stop her from striking him. They both fell off the bed and J.T. hit her head on the dresser.

**{¶27}** Brennan testified that he told the police officers that night that he didn't touch J.T. and that she hit him.

**{¶28}** The record in this case includes the footage from J.T.'s cell phone that captured part of the altercation, as well as the body-cam videos taken by the Delaware City Police Officers. The parties stipulated to Brennan's previous guilty finding of the crime of criminal mischief.

*Brennan's request for self-defense instruction*

**{¶29}** After Brennan's motion for directed verdict was denied, he requested that the jury be given a self-defense instruction:

> [MR. SMITH] Your Honor . . . I would ask that the jury be given the jury instructions for self-defense at this point. For everything that we've seen today, you know, I certainly understand . . . Mr. Brennan testified on the stand that because of these interactions, thinking of what's injured, you know, there was an injury to at least her head and hand. There was a physical pushing. That's enough for self-defense, Your Honor . . . the

> standard for self-defense going to the jury is that there's some evidence that tends to prove self-defense. It's not beyond a reasonable doubt. It's a low bar, Your honor.

**{¶30}** Tr. II, 428.

**{¶31}** The state objected to the self-defense instruction, arguing that Brennan never testified he intended to physically assault J.T. He just grabbed her shirt to keep her from falling over the bed. Tr. II, 431.

**{¶32}** While the trial court recognized that Brennan needed only to produce evidence that tended to support his defense, it denied his request for a self-defense instruction. Tr. II, 428.

**{¶33}** Later, the trial court again denied the request for a self-defense instruction, saying "I don't think that threshold has been met, so I'm denying the request. Tr. II, 460.

**{¶34}** After the jury retired to begin its deliberations, the trial court again discussed its rationale for failing to give a self-defense instruction:

> You know, one of the things that this case said is that if the evidence generates only a mere speculation or possible doubt, the evidence is insufficient to raise the affirmative defense and the submission of the issue to the jury will be unwarranted. And that is cited in this decision out of the Eighth District that you highlighted to me. And for me, in reading it, there were a number of other exceptions in reviewing it. It required some type of overt action. And I'm just . . . I think I made the correct decision in not allowing the . . . the instructions be given. And, of course, depending upon the outcome here, we'll all get clarification I'm sure.

**{¶35}** Tr. II, 478-479.

*Verdict*

**{¶36}** After hearing the evidence and receiving instructions from the trial court, the jury returned with a verdict of guilty to the charge of domestic violence and not guilty to the crime of strangulation.

*Sentencing*

**{¶37}** Brennan returned to the trial court for sentencing on December 1, 2023. Brennan was sentenced to six months in jail with credit for time served of 145 days leaving an additional 35 days to serve in the County jail.

**{¶38}** He was also sentenced to three years community control with treatment in the LINC program.

**{¶39}** Brennan brings this appeal arguing two assignments of error:

**ASSIGNMENTS OF ERROR**

**{¶40}** "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO GIVE BRENNAN A SELF-DEFENSE INSTRUCTION.

**{¶41}** "II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY SUSTAINING THE STATE'S OBJECTIONS TO TESTIFYING ABOUT PRIOR INCIDENCES, BECAUSE THEY WERE ADMISSIBLE."

## LAW AND ANALYSIS

### I.

*Standard of Review*

**{¶42}** In appellant's first assignment of error, he claims that the trial court erred in refusing to give the jury a self-defense instruction. Specifically, Brennan argues that the defense's burden to show self-defense is de minimis under recent Ohio Supreme Court rulings and that he presented de minimis evidence that J.T. was at fault in starting the affray and de minimis evidence that his force was reasonable to repel or escape J.T.[1]

**{¶43}** In reviewing a claim that the trial court erred in failing to give a jury instruction, we apply an abuse of discretion standard. "When a trial court refuses to give a requested jury instruction, the proper standard of review is whether the trial court abused its discretion under the facts and circumstances of the case." *State v. Palmer,* 2024-Ohio-539, ¶ 16 citing *State v. Wolons,* 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989).

**{¶44}** Abuse of discretion is more than an error in judgment, it suggests that a decision is unreasonable, arbitrary, or unconscionable. *State v. Adams,* 62 Ohio St.2d 151, 157-158 (1980).

*Self-defense is still an affirmative defense*

**{¶45}** Since the amendment to R.C. 2901.05 was passed by the state legislature in March, 2019, the burden regarding self-defense has shifted to the state. R.C. 2901.05(B)(1) now provides as follows:

[1] Appellant's brief is not numbered. The arguments are contained on pages eight through 10 of the brief.

> 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 . . . the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense . . . as the case may be.

**{¶46}** While the burden has shifted to the state, this does not mean that a defendant claiming self-defense is entitled to eliminate the burden of production regarding self-defense all together. *State v. Messenger,* 2022-Ohio-4562, ¶ 20. Self-defense is still an affirmative defense. *State v. Messenger, Id.* at ¶ 15; *State v. Wilson,* 2024-Ohio-776, ¶ 22. The state's burden of persuasion is not triggered until the defendant produces "legally sufficient evidence for every self-defense element." *State v. Palmer,* 2024-Ohio-539, at ¶ 19, citing *State v. Messenger,* 2022-Ohio-4562 at ¶ 19.

**{¶47}** This Court has found a similar standard in *State v. Robinette,* 2023-Ohio-5 (5th Dist.):

> In determining whether a self-defense jury instruction is warranted, we look to whether 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. R.C. 2901.05(B)(1). *Id.* at ¶ 38. (finding that the trial court erred in failing to instruct the jury on self-defense).

**{¶48}** A claim of self-defense is subject to the sufficiency of the evidence standard de novo. *State v. Messenger,* 2022-Ohio-4562, at ¶ 13.

> Similar to the standard for judging the sufficiency of the state's evidence, 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.

**{¶49}** *Id.* at ¶ *25.*

**{¶50}** In other words, to warrant a self-defense jury instruction, the defendant must produce evidence that when viewed in the light most favorable to the defendant, it is sufficient to [cause] a reasonable doubt as to guilt. *State v. Palmer, supra,* at ¶ 19.

**{¶51}** The burden then shifts to the state under its burden of persuasion to prove beyond a reasonable doubt that the defendant did not use the force in self-defense. *State v. Crawford,* 2024-Ohio-691, ¶ 21 (12th Dist.) citing *State v. Sturgill,* 2020-Ohio-6665, ¶17 (12th Dist.).

**{¶52}** And, finally, a defendant could meet this burden solely through the evidence presented by the prosecution. *State v. Messenger, supra,* at ¶ 22. In deciding whether a self-defense instruction should be given, the trial court must view the evidence in a light most favorable to the defendant without regard to credibility. If there is conflicting evidence, the instruction must be given to the jury. But mere speculation or possible doubt is insufficient to raise the affirmative offense. A bare assertion is insufficient. *State v. Ratliff,* 2023-Ohio-1970, ¶ 28 (8th Dist.).

*Elements of self-defense for non-deadly force*

**{¶53}** The elements of self-defense in an instance of non-deadly force have not changed and remain:

> (1) the defendant was not at fault in creating the situation giving rise to the altercation; (2) the defendant had reasonable grounds to believe and an honest belief, even if mistaken, that the defendant was in imminent danger of bodily harm, and (3) the only means of protecting himself or herself from that danger was by the use of force not likely to cause death or great bodily harm.

**{¶54}** *State v. Warner,* 2022-Ohio-4742, ¶ 12 (2nd Dist.). There is no duty to retreat in cases involving non-deadly force. *State v. Brown,* 2017-Ohio-7424, ¶ 25 (2nd Dist.).

*Elements of self-defense applied to Brennan*

**{¶55}** Upon a thorough review of the record, we find that the trial court did not err in denying Brennan's request for a self-defense jury instruction because Brennan failed to produce evidence that tends to support his claim he acted in self-defense; he, therefore, did not meet his burden of production.

**{¶56}** There was, at best, evidence presented at trial that Brennan met the first element of self-defense - that he was not at fault in creating the situation that gave rise to the affray. Both J.T. and Brennan testified at trial that the altercation began when J.T. objected to the television program that Brennan was watching because it reminded her of his past flirtations with her co-worker. When he would not leave the bedroom at her command, she took his medical marijuana off the nightstand, entered the bathroom with it and pretended to flush it down the toilet.

**{¶57}** Accordingly, there was some evidence that tended to support Brennan's claim that he did not start the altercation that led to the domestic violence. J.T. admitted that she snatched his medical marijuana from the nightstand when he refused to get out of her face and pretended to flush it down the toilet.

**{¶58}** But there was no evidence at trial that tended to demonstrate that he was in danger of bodily harm from J.T. While both J.T. and Brennan testified that he was slapped by J.T. and even shoved in an aggressive way, these facts do not show that Brennan believed he was in imminent danger of bodily harm. Any belief he had that he was in imminent danger from J.T.'s physical aggression was not reasonable.

**{¶59}** So, too, there was no evidence that the only means of protecting himself from J.T. was the use of force.

**{¶60}** Brennan testified at trial that during the day when the argument escalated, he left the bedroom and went outside into the garden or in another room. He returned to the bedroom to continue the argument with J.T. several times during the day.

**{¶61}** As to Brennan's state of mind, he testified that he was scared. "Hurt that I was being punched by somebody that loves me, you know. Hurt, hurt and I was fairly angry that my girlfriend, who is a registered nurse, that works at a psychiatric hospital, would do the things she did to me that day with the medicine and everything. And I don't . . . you know, it was a very scary day for me." Tr. II, 405.

**{¶62}** Brennan did not testify that he ever feared J.T. or that he felt he was in imminent danger from her actions.

**{¶63}** The elements of self-defense are cumulative; the defendant's failure to show legally sufficient evidence raising an issue on any of the elements warrants the

refusal of a self-defense instruction. *State v. Messenger,* 2022-Ohio-4562, at ¶ 25. *State v. Harvey,* 2022-Ohio-2319, ¶ 42 citing *State v. Petway,* 2020-Ohio-3848 (11th Dist.), *State v. Kovacic,* 2012-Ohio-219, ¶ 22 (11th Dist.) ("[i]n order to be entitled to an instruction on self-defense, a defendant is required to present some evidence as to each of the three elements").

**{¶64}** Here, even considering these actions in the light most favorable to Brennan, he failed to establish that he was in fear of bodily harm and his only means of recourse was the use of force. Brennan testified that during the day, he left the room but kept returning, even trying to get into bed with J.T.

**{¶65}** So, too, in order to claim self-defense, an offender must essentially admit that he physically was aggressive to the victim. Brennan admitted at trial that he told Officers that night that he didn't touch J.T. "I said I didn't touch her, yes." T. II, 408. That even after J.T. punched him, he "didn't do anything to [J.T.]" Tr. II, 409.

> [STATE]: So you didn't do anything to cause her any injury whatsoever that night?
>
> [BRENNAN] Other than do a situp, no. Tr. II, 417.
>
> . . .
>
> So, I didn't want to touch her. I was afraid of . . . of her getting hurt or me getting hurt. So I was just holding onto her shirt to create space.
>
> . . . I did a situp basically to try to leave. And we both fell off the end of the bed. She fell first, and she was going to be dumped on her head, I held onto her shirt to keep her head upright. And she fell into a clothes basket, and I fell on the floor.

**{¶66}** Tr. II, 400.

**{¶67}** Self-defense is an admission of the prohibited conduct coupled with a claim that the surrounding factors or circumstances exempt the accused from liability therefore . . . justification for admitted conduct. *State v. Knipp,* 2024-Ohio-2143, ¶ 19 (5th Dist.) citing *State v. Poole,* 33 Ohio St.2d 18 (1973); *State v. Watson,* 2023-Ohio-3137, ¶ 80 (5th Dist.).

**{¶68}** The test for a bona fide belief of imminent bodily harm is both objective and subjective: whether the defendant's belief is objectively reasonable and whether the defendant subjectively had an honest belief of imminent bodily harm. *State v. Knipp, supra,* at ¶ 25.

**{¶69}** Brennan relies on *State v. Palmer,* 2024-Ohio-539 where the Ohio Supreme Court reversed the appellate court's affirmance of a trial court's refusal to provide a self-defense jury instruction. The Supreme Court held that the refusal to provide the instruction was an abuse of discretion because the trial court discounted the evidence of self-defense based upon weight and credibility considerations. *Id.* at ¶ 22. The supreme court held that in properly assessing the issue, "[t]he question is not whether the evidence should be believed but whether the evidence, if believed, could convince a trier of fact, beyond a reasonable doubt, that the defendant was acting in self-defense." *Id.* at ¶ 21 citing *State v. Messenger,* 2022-Ohio-4562, at ¶ 25-36.

**{¶70}** In this case, there is no evidence that the trial court weighed the evidence or considered its believability supporting self-defense. To the contrary, the trial court acknowledged the correct standard of law that the defendant must provide some evidence that tends to support self-defense.

**{¶71}** Brennan also relies on *State v. Wilson,* 2024-Ohio-776. In *Wilson,* the Supreme Court held that the trial court erred in failing to give a self-defense instruction and further found that defense counsel's failure to request the instruction was ineffective assistance of counsel.

**{¶72}** The defendant, indicted on felonious assault and attempted murder, testified at trial that he did not intend to harm or kill another person; rather he fired his gun in the air to scare his attacker and not to harm him.

**{¶73}** The Supreme Court held that a self-defense instruction required only an intent to repel or escape force, not the intent to harm or kill the other person:

> For nearly 100 years, this court had held that self-defense 'presumes intentional, willful use of force *to repel or escape force*.' *State v. Champion,* 109 Ohio St. 281, 286-287, 142 N.E. 141 (1924*)*. This means that the use of force must be intentional – not accidental. The only additional 'intent' required is the intent to repel or escape force, not an intent to use force to harm or kill another person. *Id.* at ¶ 18.

**{¶74}** *Wilson* is not helpful to Brennan because he testified that J.T. was injured when she fell off the bed and accidentally hit her head on the dresser. He also testified that he told law enforcement that evening that he didn't touch her.

**{¶75}** In short, even assuming a reasonable juror could find Brennan was not at fault in creating the situation that gave rise to the altercation, no evidence was presented that tended to support that Brennan believed he was in imminent danger of bodily harm and his only means of protecting himself was by the use of force. *State v. Staats,* 2021-Ohio-1325, ¶ 18 (5th Dist.) (finding that self-defense jury instruction not warranted in

charge of domestic violence where defendant testified victim punched him and threw items at him).

**{¶76}** Appellant's first assignment of error is overruled.

**II.**

**{¶77}** In his second assignment of error, Brennan claims that the trial court erred in refusing to allow him to testify as to prior acts of the victim and sustaining the objections of the state.

**{¶78}** Prior to trial, Brennan filed a notice that he intended to invoke a claim of self-defense. While Crim.R. 12.2 requires that such notice be filed not less than 30 days before a felony trial, Brennan sought and received an order from the trial court allowing him to file it less than thirty days prior to trial. Judgment Entry Oct. 16, 2023. That notice did not list any prior incidents with the victim that he intended to rely on at trial.

**{¶79}** On October 20, 2023, Brennan filed an amended notice of self-defense seeking to admit three prior allegations [January 30, April 4, April 5] of "assault and domestic violence by the alleged victim." The state filed a motion in limine, and the trial court considered the matter the first day of trial prior to voir dire.

**{¶80}** The three prior calls to the home were discussed and did not appear to demonstrate that J.T. was the aggressor. Brennan did not call law enforcement on January 30, and April 4 and April 5 demonstrated that he was the aggressor. Tr. I, 13.

**{¶81}** The trial court granted the motion in limine and agreed to modify its ruling if necessary during the trial. Tr. I, 14.

**{¶82}** During Brennan's testimony at trial, the trial court sustained three objections from the state when Brennan stated:

> [A]: I grabbed her shirt and created distance to try to control her shoulders. I didn't want to touch her. Every time I've ever defended myself against this woman for a reason, for her putting her hands on me. Tr. II, 399.
>
> [A]: The . . . you know, as you saw in the video, the one, . . . the closet door was missing a panel. I was told that her and her ex had numerous fights and . . .

**{¶83}** Tr. II, 402.

> [A]: I was afraid because men with guns were coming and aimed tasers at me the last time, and it's scary.

**{¶84}** Tr. II, 416.

**{¶85}** A trial court is given broad discretion in admitting and excluding evidence. *State v. Maurer,* 15 Ohio St.3d 239, 265 (1984); *State v. Watson,* 2023-Ohio-3137, at ¶ 112 (5th Dist.). We review a trial court's determination on the admission of evidence under an abuse of discretion standard.

**{¶86}** We find that the trial court did not abuse its discretion in sustaining the state's objections to Brennan's attempt to introduce evidence of prior acts of the victim.

**{¶87}** First, Crim.R. 12.2 requires a defendant to file notice not less than thirty days before trial in a felony case of her or his intention to claim self-defense. The notice shall include specific information as to any prior incidents or circumstances upon which defendant intends to offer evidence related to conduct of the alleged victim. If the defendant fails to file such notice, the court may exclude evidence offered by the

defendant related to the defense unless the court determines that in the interest of justice such evidence should be admitted.

**{¶88}** Brennan did not file a notice thirty days prior to his trial and for that reason alone, the trial court did not abuse its discretion in sustaining the state's objections to his attempts to introduce prior acts of the victim.

**{¶89}** Second, Brennan attempted to introduce the prior acts to demonstrate that J.T. was the initial aggressor. His amended notice stated that he intended to introduce evidence of three prior acts of "assault and domestic violence by the alleged victim against Mr. Brennan." Notice, Oct. 20, 2023. Evid.R. 405(B) precludes a defendant from introducing specific instances of the victim's conduct to prove that the victim was the initial aggressor. *State v. Barnes,* 94 Ohio St.3d 21, 2002-Ohio-68, syllabus. "A defendant may successfully assert self-defense without resort to providing *any* aspect of a victim's character." *Id.* 94 Ohio St.3d at 24.

**{¶90}** Brennan argues in his brief that his intention in introducing such testimony of prior acts was to demonstrate his state of mind at the time of the affray, not to demonstrate that J.T. was the initial aggressor.

**{¶91}** A defendant arguing self-defense may testify about his knowledge of specific instances of the victim's prior conduct in order to establish the defendant's state of mind. *State v. Jones,* 2020-Ohio-281, ¶ 51 (1st Dist.) (reversed in part on other grounds 2021-Ohio-3311); *State v. Baker*, 88 Ohio App.3d 204, 208 (9th Dist., 1993); *State v. Watson, supra,* at ¶ 114 ("The jury heard Watson himself testify concerning the prior violent acts of T.B. and how they affected him.").

**{¶92}** However, it appears counsel abandoned that plan, perhaps because the state obtained the police body camera and police reports from two of the dates and the evidence would not aid Brennan's claim of a fearful state of mind. Tr. I, 10-12.

**{¶93}** Indeed, his counsel admonished Brennan: "I don't want to talk about the history behind. " Tr. II, 402. "Okay. Now, I want to only talk about this date." Tr. II, 416-417.

**{¶94}** We do not find that the trial court abused its discretion in sustaining the state's objections when Brennan attempted to testify to alleged prior bad acts of the victim as described above.

**{¶95}** Even assuming that the trial court erred in excluding the testimony, we would still find no reversible error. We do not find that the defendant was prejudiced by the error, the error was harmless beyond a reasonable doubt and the remaining evidence established Brennan's guilt beyond a reasonable doubt. *State v. Morris,* 2014-Ohio-5052, ¶ 25 and 27. *State v. Smith,* 2013-Ohio-746, ¶ 20 (3rd Dist.).) (holding that a trial court's Evid.R. 405(B) ruling is subject to harmless error analysis).

**{¶96}** The logs from the police department are part of the record and do not support Brennan's claim that J.T.'s prior conduct placed him in fear of bodily harm. The first instance showed a verbal argument; nothing physical and neither party wanted to speak to law enforcement. The state obtained the police body camera and police reports from the April, 2023 incidents, and Brennan's testimony regarding those incidents would have opened the door to potential harmful evidence. So, too, the testimony of the police officers and J.T. establish beyond a reasonable doubt that Brennan was not acting in fear of J.T. at the time the assaults occurred.

**{¶97}** Based on the foregoing, we hold that the trial court did not abuse its discretion in sustaining the state's objections to Brennan's testimony about prior incidents of the victim.

**{¶98}** The second assignment of error is overruled.

## CONCLUSION

**{¶99}** For the reasons stated above, we affirm the judgment of the Court of Common Pleas, Delaware County, Ohio.

By: Wise, P. J.

Baldwin, J., and

King, J., concur.

JWW/kt 0918