

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108954
	:	
v.	:	
	:	
SHANIKA JACKSON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: May 21, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-17-621258-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Ben McNair, Assistant Prosecuting Attorney, *for appellee*.

Patrick S. Lavelle, *for appellant*.

LARRY A. JONES, SR., P.J.:

{¶ 1} In this appeal, defendant-appellant Shanika Jackson (“Shanika”) challenges her felonious assault convictions as being based on insufficient evidence and against the manifest weight of the evidence. For the reasons that follow, we

reverse the felonious assault convictions based on her sufficiency of the evidence challenge.

Procedural and Factual History

{¶ 2} The incident relevant to this appeal occurred on September 6, 2017. On that date, Shanika and members of her family were involved in an altercation with one of the victims in the case, Shanika’s ex-boyfriend, Antonio Bland (“Bland”). Specifically, Shanika and her mother, Tabitha Jackson (“Tabitha”), and her sister, Victoria Jackson (“Victoria”), were shot by Bland in the area surrounding Bland’s house.

{¶ 3} The record shows that Shanika and Bland stopped dating in April or May 2017, and thereafter, Shanika and members of her family repeatedly called and texted Bland in a harassing manner. Shanika and some of her family members also engaged in other criminal behavior toward Bland, including breaking into his car and house, and vandalizing his property. Bland had called the police numerous times and made police reports on seven different occasions regarding Shanika and her family’s behavior.

{¶ 4} A grand jury returned an 11-count indictment against Shanika, Tabitha, and Victoria. Relative to the September 6, 2017 incident, all three defendants were charged in Counts 1, 2, 3, and 4 with aggravated burglary, with one- and three-year firearm specifications. Count 5 charged the defendants with felonious assault, with one- and three-year firearm specifications (victim Bland), and Count 6 charged felonious assault, with one- and three-year firearm

specifications (victim Ivelyn Ortiz (“Ortiz”)). Count 7 charged the defendants with vandalism. Count 8 charged the defendants with menacing by stalking from April 2017 to the date of the subject incident. Count 9 charged Shanika with menacing by stalking from April 2017 to the date of the subject incident. Count 10 charged Shanika and Tabitha with aggravated menacing on August 20, 2017. The final count, Count 11, charged Shanika and Tabitha with criminal damaging or endangering on August 20, 2017. Shanika and Tabitha waived their right to a jury trial, and the charges against them were presented at a joint bench trial. Victoria entered a guilty plea.

{¶ 5} At the conclusion of the state’s case, the defense made a Crim.R. 29 motion for judgment of acquittal. The trial court granted the motion in part, and dismissed the gun specifications attendant to the burglary and felonious assault charges. The motion was denied as to the other charges. The defense presented one witness. At the conclusion of the case, the trial court found Shanika and Tabitha guilty of both counts of felonious assault, and each of the counts of vandalism, menacing by stalking, and aggravated menacing; the court acquitted them of the aggravated burglary charges.

{¶ 6} Tabitha filed a timely notice of appeal from the trial court’s judgment of conviction. This court reversed Tabitha’s felonious assault convictions, but affirmed the other convictions. *State v. Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357. After *Jackson* was decided, Shanika sought, and this court granted, leave to file this delayed appeal. Shanika now

challenges her felonious assault convictions under the authority set forth in Tabitha's case. The following facts are primarily summarized from *Jackson*, Tabitha's case.

Trial Testimony

{¶ 7} As mentioned, the second victim in the case was Ortiz; she was Bland's new girlfriend. *Id.* at ¶ 4 and 5. The record shows that much of Shanika and her family's hostility toward Bland revolved around this new relationship. *Id.* at ¶ 5 and 7.

Bland's Testimony

{¶ 8} According to Bland, on the evening of the incident, he was making a birthday dinner for Ortiz. While the food was cooking, he and Ortiz were sitting on a couch watching television when they saw Victoria coming down the street. Bland told Ortiz to call 911, which she did; both Ortiz and Bland spoke to the dispatcher. A recording of the call was played at trial and admitted into evidence. *Id.* at ¶ 8.

{¶ 9} Bland described Victoria's appearance to the dispatcher. He also told the dispatcher that seven or eight people were with Victoria. Bland testified that he "panicked" because of his past experiences with Shanika and her family: he "thought [his] life was over." *Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357

{¶ 10} Bland testified that Shanika approached the front door holding a golf club and screamed to Ortiz "I want you!" as she smashed the glass storm door with the golf club. Two other people, including Tabitha, tried to come through the

door. It was at that time that Bland shot at the group; he testified that he did so to keep them out of his house. Someone returned fire; Bland testified “I don’t know who it was that was shooting, but I seen the flash and I start shooting some more.” Shanika, Tabitha, and Victoria sustained gunshot wounds. *Id.* at ¶ 9.

Forensic Testimony

{¶ 11} Numerous bullets were recovered from the scene and subjected to forensic examination. The examination revealed that the bullets came from two different firearms, one of which was Bland’s; specifically 13 of the bullets came from Bland’s weapon, while five came from the other weapon (that weapon was never recovered). *Id.* at ¶ 10.

Police Investigation

{¶ 12} The responding and lead detective in the case was Detective Shane Bauhof (“Detective Bauhof”) of the Cleveland police. The dispatch he received described the situation as an “active shooter” scene. The detective separately questioned Bland, Ortiz, Shanika, Tabitha, and Victoria. Victoria told Detective Bauhof that she and Tabitha were walking down the street when Bland came out his house and shot at them in the street for no apparent reason. Victoria did not “put Shanika on the scene at all.” *Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357, ¶ 12.

{¶ 13} But Shanika admitted to the detective that she was there. Shanika told Detective Bauhof that prior to the shooting, her mother, Tabitha, had called her multiple times telling her that Victoria had been “jumped” by Bland and Ortiz.

Tabitha later called Shanika to tell her that she (Tabitha) had also been “jumped” by Bland and Ortiz. Shanika went to her mother’s house, where she found Victoria intoxicated and with a fighting disposition. According to Shanika, Victoria ran out of the house, and she (Shanika) and Tabitha ran after her; Victoria ran to Bland’s house. Shanika told Detective Bauhof that, at Bland’s house, Victoria smashed the glass door, after which Tabitha went in front of the house and Bland started shooting. *Id.* at ¶ 13.

{¶ 14} During his investigation, the detective retrieved and searched Bland’s cell phone. The search revealed many calls and text messages from Shanika’s phone to Bland’s phone, including the following text message sent earlier in the day of the incident: Shanika texted that she had “no interest in causing harm to you or your lady friend,” but forewarned that Shanika’s sister and family were “coming sooner or later.” *Id.* at ¶ 14.

Defense Witness: I.J.

{¶ 15} I.J. is Shanika’s teenaged daughter. According to I.J., on the date of the incident, she was at home with Shanika when her grandmother, Tabitha, called and told them she (Tabitha), Victoria, and Bland had an altercation; Tabitha and Victoria were at Tabitha’s house. Shanika told Tabitha that she was coming to her house and that Tabitha should call the police and wait there until she arrived. According to I.J., she and her mother arrived at her grandmother’s house shortly thereafter and found everyone sitting on the porch waiting for the police. However, before the police arrived, Shanika, Victoria, Tabitha, and I.J. left the

house and walked to Bland's house. *Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357, ¶ 15.

{¶ 16} I.J. testified that, once at Bland's house, Ortiz began arguing with Shanika about an altercation they had earlier in the day. Ortiz was standing on the porch and Shanika was in the middle of the street. As the two were arguing, Victoria picked up a stick she found in the street, threw it at the glass storm door, and broke it. Bland then came out of the house and began shooting at the Jacksons, who were still in the street. I.J. testified that she did not see anyone else with a gun during the incident. *Id.* at ¶ 16.

Assignments of Error

- I. Shanika Jackson's convictions for felonious assault are contrary to law and to the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 16, of the Ohio Constitution in that there was insufficient evidence to establish each and every element of the offenses beyond a reasonable doubt.
- II. Shanika Jackson's convictions are against the manifest weight of the evidence and, accordingly, she was denied her fundamental right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

Law and Analysis

{¶ 17} As mentioned, Shanika's challenge to her felonious assault convictions are based on this court's decision in her mother's case, *Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357. In *Jackson*, this court reversed Tabitha's felonious assault convictions, finding the evidence insufficient to support them. In doing so, the *Jackson* panel considered Shanika's conduct. Specifically,

the state’s theory of Tabitha’s guilt was as an aider and abettor to Shanika’s actions. Thus, “the state was required to prove that Shanika attempted to cause physical harm to Bland and Ortiz, because no actual physical harm was inflicted.”

Id. at ¶ 27.¹

{¶ 18} This court held that the state did not present sufficient evidence that Shanika attempted to cause physical harm to the victims: “[t]he deadly weapon in the case at hand was not a gun; rather, it was a golf club. There is no evidence in the record that Shanika swung the club at either victim or in a manner that it may have hit Bland or Ortiz.” *Id.* at ¶ 30. The *Jackson* majority further noted that Shanika was not able to get into Bland’s house and the trial court acquitted the defendants of the aggravated burglary charges:

If Shanika and Tabitha did not commit aggravated burglary, and Bland and Ortiz did not leave the house and were not physically injured, it stands to reason that, under the facts of this case, the defendants did not commit or attempt to commit felonious assault.

Id. at ¶ 32.²

{¶ 19} At oral argument, we questioned the parties as to whether Tabitha’s case was law of the case for this case, and requested them to submit supplemental briefing on the issue. Neither party submitted a case directly on point with this

¹Relative to the felonious assault charges, the indictment against the defendants charged that they “did knowingly cause or attempt to cause physical harm to [Bland and Ortiz] by means of a deadly weapon or dangerous ordnance, to wit: a firearm and/or metal pipe and/or golf club,” in violation of R.C. 2903.11(A)(2).

²There is a dissent in *Jackson*; the dissent believed the evidence was sufficient to find that Shanika attempted to cause serious physical harm to the victims and therefore would have affirmed Tabitha’s felonious assault convictions. *Id.* at ¶ 45-46.

case. But Shanika contends that because the “law of the case doctrine has been recognized as a legal doctrine necessary to ensure consistency of the results in a case,” not applying Tabitha’s case to this case “would be ignoring [this court’s] own conclusions of law and fact * * * and would create a wildly inconsistent judgment.”

{¶ 20} The state, on the other hand, contends that the “law of the case does not apply with respect to criminal codefendants, because they are different parties,” and cites *State v. Sperling*, 8th Dist. Cuyahoga No. 58392, 1984 Ohio App. LEXIS 12089 (Dec. 20, 1984), in support of its position.

{¶ 21} After careful consideration, we find that the situation here presents an unusual twist on the law-of-the-case doctrine. The doctrine provides that “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). Usually, the doctrine applies to one case; that is, for example, what this court decided in *Jackson* would be the law of the case relative to Tabitha’s case. But the doctrine can also apply “for a succeeding judge in the same court, between the same parties, in the same or similar proceedings.” *Sperling* at ¶ 5.

{¶ 22} In *Sperling*, the defendant and a codefendant were indicted on drug-related charges; they had both been arrested at the defendant’s home after the police executed a search of the home pursuant to a search warrant. The defendants’ cases were assigned to the same trial judge, and the codefendant filed a motion to suppress, which the trial court granted after a suppression hearing.

{¶ 23} After the codefendant’s suppression motion had been granted, the defendant filed her own motion to suppress. However, the original trial judge recused himself from the defendant’s case, with the defendant’s motion to suppress still pending. The case was reassigned to another trial judge. The new judge held a “hearing” on the defendant’s suppression motion, but it was not an evidentiary hearing. Rather, at the “hearing” the new judge granted the defendant’s motion based on the law-of-the-case doctrine, and purportedly incorporated into the record the evidence and arguments made by the initial judge regarding the codefendant’s motion. The state appealed on substantive grounds.

{¶ 24} The record before this court did not contain the record from the codefendant’s suppression hearing, however. Further, because the new trial judge did not conduct an evidentiary hearing on the defendant’s motion, there was no way for this court to examine the challenge presented by the state.

{¶ 25} However, this court did find that the trial court’s decision to grant the defendant’s motion on the law-of-the-case doctrine was improper, reasoning as follows:

Certainly, this court could not uphold the search on the basis of evidence concerning which this defendant had no opportunity for confrontation or cross-examination. Therefore, we could not grant the relief which the state requests, even if we had a transcript of the proceedings on the codefendant’s suppression motion. However, we can direct that the trial court conduct an evidentiary hearing on this defendant’s suppression motion, since the present order has no proper foundation in the complete record of the proceedings for this case. While the trial court may give deference to legal rulings by another judge in a related case, it has no binding obligation to do so.

Sperling, 8th Dist. Cuyahoga No. 58392, 1984 Ohio App. LEXIS 12089 (Dec. 20, 1984), 5-6.

{¶ 26} Thus, the state is correct that the law of the case did not apply to the situation presented in *Sperling*. But, as mentioned, this court’s holding in *Sperling* specifically states that the doctrine applies “for a succeeding judge in the same court, between the same parties, in the same or similar proceedings.” *Id.* at ¶ 5. The “succeeding judge in the same court” is this court — the same court is reviewing both Tabitha and Shanika’s appeals; the same parties are involved — the state and Tabitha and Shanika Jackson, who were jointly indicted; and the proceeding was the same — the same evidence was presented against both Tabitha and Shanika at a joint trial, where unlike in *Sperling*, both defendants were present and had the opportunity to challenge it. Reviewing that same evidence, this court has found that “[t]here is no evidence in the record that Shanika swung the club at either victim or in a manner that it may have hit Bland or Ortiz.” *Jackson*, 8th Dist. Cuyahoga No. 107567, 2019-Ohio-3357, at ¶ 30.

{¶ 27} We recognize, however, that our holding does not mean that an alleged accomplice (in this case, Tabitha) must be acquitted if the alleged principal offender (in this case, Shanika) is acquitted. To be found guilty of a crime as an aider and abettor, a person must have been present, have procured, have encouraged, or have participated in the crime. *State v. Johnson*, 10 Ohio App.3d 14, 18, 460 N.E.2d 625 (10th Dist.1983).

{¶ 28} R.C. 2923.03 provides that one who aids or abets in the commission of a crime may be prosecuted as if he or she were a principal offender. Moreover, R.C. 2923.03(B) expressly states that: “It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.”

{¶ 29} But this court already found in *Jackson* that neither Tabitha nor Shanika attempted to cause physical harm to Ortiz or Bland. Based on our discussion above, that is the law of the case for both Tabitha and Shanika.

{¶ 30} Accordingly, Shanika’s first assignment of error is well taken. The second assignment of error is moot. *See* App.R. 12(A)(1)(c).

{¶ 31} The trial court’s judgment of conviction on the felonious assault charges is reversed. On remand, the court shall vacate those convictions.

{¶ 32} Reversed and remanded.

It is ordered that appellant recover from appellee 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 common pleas court to carry this judgment into execution.

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

LARRY A. JONES, SR., PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
RAYMOND C. HEADEN, J., CONCUR