

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : No. 108983  
 v. :  
 :  
 KEVIN BRADLEY, :  
 :  
 Defendant-Appellant. :

---

JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: June 25, 2020**

---

Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-19-636657-A

---

***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, Maxwell Martin, Assistant Prosecuting  
Attorney, *for appellee*.

Patrick S. Lavelle, *for appellant*.

PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Kevin Bradley (“Bradley”) appeals from his felonious assault and  
firearm specification convictions and assigns the following errors for our review:

- I. The jury determination in lower court in regards to counts three, five, six, eight, nine, ten and any gun specifications was against the manifest weight of the evidence.
- II. There was not sufficient evidence presented to the trier of fact in the lower court proceeding to convict the appellant of counts three, five, six, eight, nine, ten or any gun specifications.

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's judgment. The apposite facts follow.

{¶ 3} Bradley and Beniqua Cromity, who have what Beniqua described as a "toxic" relationship, share a child together. On April 3, 2018, Beniqua went to Bradley's apartment to pick up their son. She got into a fight with Bradley and members of his family, during which Bradley choked her. Later that night, Beniqua, along with some of her female friends and family, went back to Bradley's apartment and got into another fight.

{¶ 4} The next day, April 4, 2018, Beniqua, her brother Benny, her brother Tameris, and other friends and family members ("the Cromitys") went back to Bradley's neighborhood in two cars to fight again. The Cromitys parked on a street behind Bradley's apartment complex, and Bradley's cousin tried to run the Cromitys over with a van. While the Cromitys were focused on this van, Bradley, his brother Terrance, and an unidentified person began shooting from a small field behind where the Cromitys were standing. Both of Beniqua's brothers were shot. Benny died from a gunshot wound to the chest, but Tameris survived.

{¶ 5} On February 5, 2019, Bradley was charged with various offenses associated with the shooting. The case proceeded to trial, and on March 22, 2019,

the jury found Bradley not guilty of aggravated murder and murder, but guilty of the following offenses: two counts of felonious assault in violation of R.C. 2903.11(A)(1); four counts of felonious assault in violation of R.C. 2903.11(A)(2); two counts of discharging a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3); and multiple one- and three-year firearm specifications. On April 15, 2019, the court sentenced Bradley to 11 years in prison. It is from his felonious assault and firearm specification convictions that Bradley now appeals.

### **Sufficiency of the Evidence**

{¶ 6} Crim.R. 29 mandates that the trial court issue a judgment of acquittal where the prosecution's evidence is insufficient to sustain a conviction for the offense. Crim.R. 29(A) and sufficiency of the evidence require the same analysis. *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134. "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Driggins*, 8th Dist. Cuyahoga No. 98073, 2012-Ohio-5287, ¶ 101, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 7} The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Vickers*,

8th Dist. Cuyahoga No. 97365, 2013-Ohio-1337, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

### **Manifest Weight of the Evidence**

{¶ 8} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

The criminal manifest weight of the evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive – the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.” *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 9} An appellate court may not merely substitute its view for that of the jury, but must find that “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.” *Thompkins* at 387. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

## **Felonious Assault**

{¶ 10} Pursuant to R.C. 2903.11(A)(1), “No person shall knowingly \* \* \* [c]ause serious physical harm to another.” Pursuant to R.C. 2903.11(A)(2), “No person shall knowingly \* \* \* [c]ause or attempt to cause physical harm to another \* \* \* by means of a deadly weapon \* \* \*.”

## **Complicity**

{¶ 11} Pursuant to R.C. 2923.03(A)(2), “No person, acting with the kind of culpability required for the commission of an offense, shall \* \* \* [a]id or abet another in committing the offense.” The Ohio Supreme Court further established that, to prove complicity, “the evidence must show that the defendant supported, assisted, encourage, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal. Such intent may be inferred from the circumstances surrounding the crime.” *State v. Johnson*, 93 Ohio St.3d 240, 245-246, 754 N.E.2d 796 (2001). Furthermore, “the identity of the principal is not an element that the state must prove to establish the offense of complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2).” *In re T.K.*, 109 Ohio St.3d 512, 2006-Ohio-3056, 849 N.E.2d 286, ¶ 13.

## **Trial Testimony**

{¶ 12} In the case at hand, the following evidence was presented at Bradley’s trial.

**{¶ 13}** Beniqua testified that Bradley is the father of her son, who was born on February 9, 2016. According to Beniqua, her relationship with Bradley “was okay in the first couple years. When we moved [in] together that’s when everything got crazy, toxic.” On April 3, 2018, when Beniqua was picking up their son from Bradley’s apartment on Wade Park, she got into an argument with Bradley’s sister. Bradley then choked Beniqua and threw her into her car. That night, Beniqua and some of her female friends and family went back to Bradley’s apartment “to fight.” According to Beniqua, this was her idea, and the women got into a fist-fight in front of the apartment.

**{¶ 14}** The next day, the Cromitys took two cars and drove to Bradley’s. After they parked on the street behind Bradley’s apartment complex, Bradley’s cousin Brittany drove a white van toward the group. Beniqua testified as follows about what happened next:

Her lights on the car was off and she was blocking us off the street. First she tried to — at first she tried to run us over so we had got on the sidewalk and then got back in the street and she like blocked us off and we was turning — our backs was turned but we was facing her, her van, to see if — we was seeing if people was going to get out the car. Our back was turned and my brother turned around and said, There they go, and then they just started shooting.

**{¶ 15}** According to Beniqua, her group was focused on the van, but behind them was a small field that led to Bradley’s apartment complex. The shots were fired from this field. Beniqua, Tameris, and their cousin Moesha hid behind Beniqua’s car. Benny jumped in front of the car and tried to run. Both Benny and Tameris were shot. A bullet also went through the windshield of Beniqua’s car. Asked who

was shooting the guns, Beniqua testified, “Kevin Bradley, his brother Terrance Bradley, and there was a third person, but his face was covered. \* \* \* I saw Kevin Bradley in the middle. He stood out the most because he was the biggest. I remember his jacket that he had on that he always wear. It was a blue windbreaker jacket.” The Cromitys got in Beniqua’s car, and she drove them to the Cleveland Clinic. According to Beniqua, Benny died in the back seat of her car on the way to the hospital.

{¶ 16} On cross-examination, Beniqua testified that she did not identify the shooters to the police when she was questioned on the night of incident. At the time, she told the police it was too dark to see. However, during the trial, Beniqua testified that “I didn’t want to give no names because I was so mad, I didn’t know my brother had passed away yet, and I wanted to get revenge. \* \* \* I don’t know. I wasn’t thinking in the moment. I was just so mad that night.”

{¶ 17} Tameris testified about going to Bradley’s apartment complex on the night of April 4, 2018: “I don’t know what like the altercation was the day before the 4th but I know on the 4th I was told that they wanted to fight. We was supposed to meet them down on Wade Park. We get down there. Wasn’t no fight and we got shot.” Asked what he was expecting, Tameris answered, “Fistfight. Just like a one-on-one or them two fighting and it’s going to be us two fighting. Like that. No weapons, nothing, just straight hands and fists.” Tameris continued:

We got — as soon as we got there we got out the car. I guess they seen us where we was — wherever we parked at, they seen us and this van came from behind us. They pulled up, they pulled back, pulled up,

pulled back. Then the last time they pulled all the way back to the end of the street and my brother Benny turned around. I don't know what made him turn around or nothing. He turned around and he was like, they right there. \* \* \* They pulled to the back of the street and they stopped. I don't know if they turned the car off or not. Probably about five, seven minutes later, that's when gunshots started going off and we got shot. \* \* \* I was standing on the sidewalk and [Benny] was behind me.

{¶ 18} Tameris testified that there was a “cut” or a field that they went through and came through to shoot us. According to Tameris, there were three men and two of them were shooting. “I heard two — one of the guns — both of the guns was sounding off at different times, different sounds. One was louder than the other, one was shooting faster than the other, so I picked that up and I never forgot it.” Asked if he recognized the shooters, Tameris said, “I didn't see face because it was dark but I seen shape, figure. I know his run. I know how he walk. I know how big he is.” Asked who he was describing, Tameris identified Bradley. “Been around him for three-plus years so picking up tricks like that is not very hard.”

{¶ 19} Tameris further testified that he recognized Bradley as one of the shooters, “Not by face, because like I said before, I've been around [Bradley] for years so the way he run, the way he walk, height, size, all of that, it's memorable.” However, when interviewed by the detectives after he was released from the hospital, Tameris did not identify Bradley as one of the shooters. Tameris testified that he was shot in the right leg below his knee, and Benny was shot in the chest.

{¶ 20} Moesha Strozier testified that she is Beniqua's cousin, and she was part of the group that went to Bradley's on April 3, 2018, to fight several females that



were related to or friends with Bradley. She was also part of the Cromitys group that went back to Bradley's on April 4, 2018, to fight again. According to Moesha, "We pull up to the street, we got out. A white van skirted [sic], tried to hit us. We started walking towards it telling her to get out the car. Benny Cromity, my cousin, turned around and said, There it go, the people, and we turned around. We had exchanged words and before I know it they got to shooting and we all scattered."

{¶ 21} Asked who was shooting, Moesha answered, "It was Kevin Bradley and Terrance Bradley." Moesha testified that she saw three people "[a]t the end of the street by the field" shooting, although she could not identify the third person. Benny and Tameris both were shot, and Moesha rode in Beniqua's car with them to the hospital. Moesha spoke with the police that night and identified Bradley and his brother Terrance as the shooters. However, Moesha told the police that there were four people shooting.

{¶ 22} Cleveland Police Officer Nicholas Lombardi ("Officer Lombardi") testified that he responded to a call at the Cleveland Clinic at 9:14 p.m. on April 4, 2018, about a person who was brought into the hospital after suffering a gunshot wound. Officer Lombardi interviewed Beniqua, Moesha, and another witness Dionne Watson. From these interviews, Officer Lombardi determined that Bradley and an individual named Blade<sup>1</sup> were suspects in the shooting. Officer Lombardi

---

<sup>1</sup> It was established later at trial that Terrance Bradley's nickname is "Blade."

also observed Beniqua's car parked at the Cleveland Clinic with a bullet hole in the windshield.

{¶ 23} Cleveland Police Detective Raymond Diaz ("Det. Diaz") testified that he investigated the April 4, 2018 homicide at issue in this case. According to Det. Diaz, after interviewing witnesses on the night of April 4, 2018, Bradley and his brother Terrance, were identified as suspects in the shooting that killed Benny and injured Tameris.

{¶ 24} On April 5, 2018, the day after the shooting, Det. Diaz went to the crime scene to look for spent cartridge casings, when "gunshots were fired from the parking lot of 9216 Kenmore," which is Bradley's apartment complex. Det. Diaz saw two people shooting and running from the scene. "We chase them through some yards, one of them being in an area where \* \* \* one of the guns were [sic] recovered where that garbage area was and they did get away from us. Then we returned back to 9216 Kenmore."

{¶ 25} Det. Diaz determined that the shots were fired at Bradley's residence and recovered several cartridge casings from the parking lot. The police got consent to search the apartment, and Bradley was in the kitchen near the table. There were two guns on the kitchen table — a Smith & Wesson 9 mm and a Taurus 9 mm. Bradley admitted the guns were his and that he fired them, explaining that he was defending his home from the shooting that just happened that morning. The police collected the evidence and brought Bradley to the homicide unit to question him about the shooting the night before.

**{¶ 26}** Bradley initially told the police that he was home and stayed inside his apartment all night on April 4, 2018. After being told that the police had video footage of the shooting from a neighbor's security camera, Bradley stated that he was outside during the shooting, but he was not one of the shooters. Det. Diaz testified that the video the police recovered from the neighbor showed a white van driving, then backing up on the street near the field. The video also showed the Cromitys arriving to the area in Beniqua's car. The video does not show the shooting or the shooters.

**{¶ 27}** Det. Diaz further testified that 18 spent casings were recovered from Bradley's apartment complex's parking lot on April 5, 2018, and one bullet was recovered from the windshield of Beniqua's car while it was parked at the Cleveland Clinic on the night of April 4, 2018. Det. Diaz testified that no casings were recovered from the scene of the April 4, 2018 shooting in the field. In other words, the only physical evidence recovered on the night of the incident was a bullet lodged in the windshield of Beniqua's car. All cartridge casings that were recovered were found in the parking lot of Bradley's apartment complex right after shots were fired on the morning of April 5, 2018.

**{¶ 28}** Det. Diaz testified that one of the shooters during the April 5, 2018 incident was identified as Beniqua's stepbrother. Bradley was not charged with any offenses regarding the April 5, 2018 shooting, and according to Det. Diaz, Bradley was a victim of that shooting.

**{¶ 29}** Cleveland Police Officer Darryl Johnson testified that three firearms were found at 9216 Kenmore, which is Bradley’s apartment, on April 5, 2018: a Smith & Wesson 9 mm pistol; a Taurus 9 mm pistol; and a SCCY 9 mm pistol.

**{¶ 30}** The 18 cartridge cases that were recovered from the parking lot on April 5, 2018, the day after the incident at issue, were tested, and the forensic firearms examiner testified that nine were fired from a Smith & Wesson 9 mm pistol, and nine were fired from a SCCY 9 mm pistol. One additional damaged shell that was recovered from the windshield of Beniqua’s car was also examined, and it was inconclusive from which gun this bullet was fired, although the Taurus 9mm pistol could not be ruled out.

**{¶ 31}** The forensic scientist who examined the trace evidence in this case testified that she analyzed a gunshot residue test performed on Bradley’s hands on April 5, 2018. Bradley’s hands tested positive for gunshot residue, and the examiner testified that Bradley “either fired a weapon, [was] in close proximity to a weapon when it was fired, or \* \* \* may have touched an item that already had gunshot residue on it.”

### **Analysis**

**{¶ 32}** Bradley argues on appeal that no witnesses testified that he had a gun during the incident at issue and no firearms or shell casings were recovered from the crime scene. Bradley further argues that there was no evidence that he “undertook some action [sic] verbal or nonverbal gesture which could be considered threatening to the victim,” thus implying that he had a gun. Therefore, according to Bradley,

there was insufficient evidence to convict him of any of the charges, which are all based on the possession or use of a firearm. In the alternative, Bradley argues that his convictions were against the manifest weight of the evidence for the same reason. We address his assigned errors together.

**{¶ 33}** Upon review, we find that three witnesses testified that Bradley was one of the shooters, and although it is unknown who fired what shots, Benny was fatally shot in the chest, and Tameris was shot in the leg. Bradley is correct in stating that no bullet casings or guns were recovered from the scene of the April 4, 2018 shootings. In fact, all 18 bullet casings that were recovered were found the next day in the parking lot of the apartment complex immediately after the second shooting that morning. These casings were fired from the guns recovered from Bradley's kitchen on April 5, 2018. One damaged bullet was recovered on April 4, 2018, and it was found lodged in the windshield of Beniqua's car. It could not be determined what gun fired that bullet. Furthermore, no bullets were recovered from Benny's body or Tameris's leg.

**{¶ 34}** However, lack of physical evidence does not mean that the evidence the state did present was insufficient to convict a defendant of the offenses with which he or she was charged. *See State v. Lundy*, 8th Dist. Cuyahoga No. 90229, 2008-Ohio-3359, ¶ 12 ("The state may use either direct or circumstantial evidence to prove the essential elements of an offense. \* \* \* Simply because the state did not present physical evidence showing that [the defendant] spat on the officers does not mean that the record contains insufficient evidence to support his conviction or that

his conviction is against the manifest weight of the evidence”). Furthermore, witness testimony alone is sufficient to convict someone of a crime. *See State v. Rudd*, 8th Dist. Cuyahoga No. 102754, 2016-Ohio-106, ¶ 37 (“eyewitness identification alone is sufficient to support a conviction — even where discrepancies exist — so long as a reasonable juror could find the eyewitness testimony to be credible”).

**{¶ 35}** Accordingly, we find sufficient evidence to support Bradley’s convictions, and his first assigned error is overruled.

**{¶ 36}** Turning to the manifest weight of the evidence, we find that this case comes down to witness credibility. The physical evidence presented tends to show that Bradley fired at least one of the guns found in his kitchen on the morning of April 5, 2018. The casings recovered were linked to these guns, he tested positive for gunshot residue on April 5, 2018, and he admitted to firing a weapon to defend his home from the shots fired from the parking lot of his apartment complex.

**{¶ 37}** Of course, Bradley’s convictions do not stem from the April 5, 2018 shooting. Bradley was convicted of offenses that took place on April 4, 2018. Three witnesses testified that Bradley was one of the shooters. Two of these witnesses, however, did not identify Bradley to the police when they were questioned, claiming that it was too dark to see faces. Beniqua and Tameris both testified that they knew it was Bradley by his size and body shape. Beniqua testified that she did not identify Bradley at the time because she wanted revenge. Tameris did not testify as to why

he failed to identify Bradley as one of the shooters when he spoke with the police after the incident.

{¶ 38} One witness to the shooting, Moesha Strozier, identified Bradley to the police as one of the men she saw in the field shooting at the Cromitys on the night in question. Det. Diaz testified that Bradley and his brother Terrance were identified as suspects in this shooting on the same night the incident took place. A relative of the Cromitys shot at Bradley's apartment the morning after the incident took place. There is myriad evidence that the Cromitys and Bradley, along with his family and friends, engaged in two fights the day before the incident took place.

{¶ 39} The Ohio Supreme Court held that it is

well-settled under Ohio law that a defendant may be convicted solely on the basis of circumstantial evidence. “\* \* \* [P]roof of guilty may be made by circumstantial evidence as well as by real evidence and direct or testimonial evidence, or any combination of these three classes of evidence. All three classes have equal probative value, and circumstantial evidence has no less value than the others.” “Circumstantial evidence is not less probative than direct evidence, and, in some instances, is even more reliable.”

(Citations omitted.) *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1988).

{¶ 40} “Circumstantial evidence is the proof of facts or circumstances by direct evidence from which a jury may reasonable infer other related or connected facts which naturally and logically follow, according to the common experience of man.” *State v. Beynum*, 8th Dist. Cuyahoga No. 69206, 1996 Ohio App. LEXIS 2143 (May 23, 1996), citing former *Ohio Jury Instructions* CR Section 5.10.

{¶ 41} The testimonial and circumstantial evidence in the case at hand, along with the law regarding complicity, supports a jury finding that Bradley either shot at the Cromitys, or aided and abetted the shooters, on April 4, 2018. Therefore, the jury did not lose its way in convicting Bradley of felonious assault and the associated firearm specifications, and Bradley's second assigned error is overruled.

{¶ 42} 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 common pleas 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.

---

PATRICIA ANN BLACKMON, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and  
RAYMOND C. HEADEN, J., CONCUR