

[Cite as *State v. Bradley*, 2021-Ohio-2687.]

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 109547
v.	:	
	:	
TERRANCE BRADLEY,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 5, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-646356-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney,
and Janna R. Lifford, Assistant Prosecuting Attorney, *for*
appellee.

Rick L. Ferrara, *for appellant.*

MICHELLE J. SHEEHAN, J.:

{¶ 1} Appellant Terrance Bradley appeals his convictions for four counts of felonious assault and one count of having weapons while under disability. Because we find no error in the jury verdicts, appellant's convictions were based on sufficient

evidence, and the convictions are not against the manifest weight of the evidence, we affirm the convictions.

I. FACTS AND PROCEDURAL HISTORY

A. The Indictments and Conviction

{¶ 2} Terrance Bradley was indicted on December 5, 2019, for one count of aggravated murder in violation of R.C. 2903.01(A) with one- and three-year firearm specifications, one count of murder in violation of R.C. 2903.02(A) with one- and three-year firearm specifications, two counts of felonious assault in violation of R.C. 2903.11(A)(1) with one- and three-year firearm specifications, two counts of discharge of firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) with one- and three-year firearm specifications, four counts of felonious assault in violation of R.C. 2903.11(A)(2) with one- and three-year firearm specifications, and one count of having weapons while under disability in violation of R.C. 2923.13(A)(3).¹

{¶ 3} A jury trial commenced on December 10, 2019, on the murder, felonious assault, and discharge of firearm on or near prohibited premises counts; Bradley elected to try the having weapons while under disability charge tried by the court. At the close of the state's case, the trial court granted Bradley's motion for

¹ Bradley's brother and codefendant, Kevin Bradley, was tried and convicted in a separate trial for six counts of felonious assault, two counts of discharging a firearm on or near prohibited premises, and multiple firearm specifications. Kevin Bradley's convictions were affirmed by this court in *State v. Bradley*, 8th Dist. Cuyahoga No. 108983, 2020-Ohio-3460, *reopening denied*, 8th Dist. Cuyahoga No. 108983, 2020-Ohio-5617.

acquittal pursuant to Crim.R. 29 only as to one count of felonious assault. On December 13, 2019, the jury returned guilty verdicts as to five counts of felonious assault and returned not guilty verdicts on the remaining counts and firearm specifications. The trial court returned a verdict of guilty on the charge of having weapons under disability.

{¶ 4} On January 24, 2020, the trial court found that two counts of felonious assault were allied offenses and sentenced Bradley to an aggregate five-year term of imprisonment. It imposed five-year prison sentences on each of the felonious assault charges, 12 months in prison on the having weapon under disability charge, and ordered all terms of imprisonment to be served concurrently.

B. Facts Presented at Trial

{¶ 5} Terrance Bradley's charges arose from a shooting incident that occurred on April 4, 2018, in which Benny Cromity was killed and his brother Tameris shot. The events that led to the shooting began the day before, when a fight began at Bradley's apartment complex. Beniqua Cromity, who has a child with Bradley's brother, Kevin, and Moesha Stroezer went to Bradley's apartment complex to pick up Beniqua's child. A fight began between Beniqua and Kevin's girlfriend. Kevin and two of his sisters became involved and Beniqua and Moesha left. Beniqua and Moesha returned later that evening with others and a fight ensued. The fight broke up when Kevin and Terrance pulled guns. Later, the two groups, the Cromitys and the Bradleys, continued to argue over the internet and arranged to fight the following day.

{¶ 6} On April 4, 2018, Beniqua and a group of her friends and family, including Moesha, Benny, Tameris, Angelo Smith, Deion Watson, and two other women went to Bradley's apartment complex to fight. The Cromitys did not go directly to the apartment, rather they went to an adjacent street, from which the apartment could be accessed across a field. When they arrived, a van, driven by Kevin's cousin, drove toward them and blocked them in. Moesha testified that after that, Kevin and Terrance were shooting at them from across the park. Beniqua testified that she saw three people shooting at them, Kevin and two others she could not identify. Tameris testified at trial that he saw three people, and that two of them were shooting. Tameris did not identify any of the three men.

{¶ 7} After the shooting stopped, Beniqua took Benny to the hospital. She was met at a Cleveland Clinic facility by both an ambulance and Cleveland Police Department Officers. Benny was shot in the chest and died from his injury. Tameris was shot in the leg and treated at the hospital and released. The Cleveland Police Department investigated the shooting, and Beniqua took them to the street where the shooting occurred. There, police officers looked for physical evidence and canvassed the neighborhood. They confirmed that a shooting occurred and located a video that depicted the van as described by Beniqua and other witnesses.

C. The Verdicts

{¶ 8} The jury returned not guilty verdicts on the aggravated murder, murder, and discharge of a firearm on or near prohibited premises charges. The jury returned verdicts of guilty as to felonious assault in violation of R.C.

2903.11(A)(1), which named the victim as Benny Cromity; felonious assault in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2), which named the victim as Tameris Cromity; felonious assault in violation of R.C. 2903.11(A)(2), which named the victim as Beniqua Cromity; and felonious assault in violation of R.C. 2903.11(A)(2), which named the victim as Moesha Strozier. The jury entered not guilty verdicts on the one- and three-year firearm specifications attached to the felonious assault charges. The trial court returned a verdict of guilty on the charge of having weapons while under disability.

II. LAW AND ARGUMENT

A. The Convictions for Felonious Assault Are Based on Sufficient Evidence and Are Not Against the Manifest Weight of The Evidence

{¶ 9} In his second and third assignments of error, Bradley challenges the sufficiency and manifest weight of the evidence. Because the resolution of these assignments of error affects the analysis of the third assignment of error challenging the verdicts, we address them first. Bradley's second assignment of error reads:

Insufficient evidence supported appellant's convictions under a principle [sic] or an accomplice liability theory.

{¶ 10} Bradley's third assignment of error reads:

The manifest weight of the evidence supported appellant's conviction for accomplice liability. [Sic]

{¶ 11} Bradley argues that the evidence presented at trial was insufficient to sustain his convictions for felonious assault as either the principal offender or as an accomplice and, further, was against the manifest weight of the evidence. The state

argues that the evidence was sufficient where the jury could find each element of felonious assault and enter guilty verdicts and that the jury did not lose its way in convicting Bradley.

{¶ 12} When reviewing a challenge to the sufficiency of evidence, we determine whether the evidence, if believed, would convince the average juror of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "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." *Id.* We are mindful that circumstantial and direct evidence "possess the same probative value." *Id.* at 272. The review is not to determine "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

{¶ 13} In contrast, a challenge to the manifest weight of the evidence after a criminal conviction asserts that the state has not met its burden of persuasion in obtaining the conviction. *Thompkins* at 390. The manifest weight challenge raises factual issues:

"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.”

Id. at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983); *State v. Townsend*, 8th Dist. Cuyahoga No. 107177, 2019-Ohio-544, ¶ 20.

{¶ 14} In this case, the trial court instructed the jury on complicity pursuant to R.C. 2923.02, which provides in relevant part, that “[n]o person, acting with the kind of culpability required for the commission of an offense, shall * * * [a]id or abet another in committing the offense.” R.C. 2923.03(A)(2).

The statute does not define aiding and abetting, but the Supreme Court of Ohio has held that, to support a conviction for complicity by aiding and abetting, the evidence must show that the defendant “supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal.” *State v. Johnson*, 93 Ohio St.3d 240, 2001-Ohio-1336, 754 N.E.2d 796, syllabus. Furthermore, “[s]uch intent may be inferred from the circumstances surrounding the crime.” *Id.* at 246.

State v. Williams, 2019-Ohio-794, 132 N.E.3d 1233, ¶ 35 (8th Dist.). In determining whether an offender was complicit in the commission of a crime with another, the circumstances to be considered “may include the offender’s presence, companionship, and conduct before and after the crime is committed.” *State v. Crosby*, 8th Dist. Cuyahoga No. 106504, 2018-Ohio-3793, ¶ 12; *State v. Moore*, 7th Dist. Mahoning No. 02 CA 152, 2004-Ohio-2320, ¶ 31.

{¶ 15} Bradley was convicted of felonious assault in violation of R.C. 2903.11(A)(1) and 2903.11(A)(2). R.C. 2903.11 reads in relevant part:

(A) No person shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

{¶ 16} The state produced testimony that indicated Bradley and his family fought with the Cromitys. The next day, the Cromitys and the Bradleys planned to meet in order to fight. When the Cromitys arrived, the victims testified that a van driven by Kevin's cousin blocked their cars on the street just prior to the shooting. The victims testified that there were three men coming across the field at them shooting; Beniqua identified Kevin Bradley as shooting at them, Moesha identified both Kevin and Terrance Bradley as shooting at them, and Tameris did not identify anyone.

{¶ 17} Bradley bases his argument that the evidence was insufficient because the jury did not find him guilty of the firearm specification and that, as such, the jury could not logically find him guilty of felonious assault because the charges included the use of a firearm. He further argues that the evidence was insufficient because the evidence did not indicate anything other than his presence at the scene of the shootings. However, Moesha testified that she saw Bradley shooting at them from across the field by a lamp post, direct evidence that he was a principal offender. Further, there was evidence that the fight was planned. Prior to the planned fight, one person from the Bradley group drove a van toward the Cromitys, which, as Beniqua testified, created a "death trap." Then the shooting occurred. Given the

identification of Bradley as shooting a gun at the Cromitys and as being among the group shooting at them, the evidence was sufficient to allow the jury to find Bradley guilty of the felonious assault counts as a principal offender, as well as an accomplice.

{¶ 18} Accordingly, Bradley’s second assignment of error is overruled.

{¶ 19} Bradley’s arguments that his convictions are against the manifest weight of the evidence rest upon the premise that the eyewitness testimony was suspect because of inconsistencies in the testimony. Further Bradley argues that the victims planned the fight and had ulterior motives in testifying. Moreover, Bradley also argues that the victims could not have seen or identified the shooters because of the lighting in the area and circumstances of the shooting. These arguments address the weight and credibility to be given the evidence and those determinations are within the province of the jury. *See State v. Hill*, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996). However, the testimonial evidence was not wholly incongruous or contradictory and, when considering the totality of the evidence presented, supports the jury verdicts finding Bradley guilty of felonious assault. *See Bradley*, 8th Dist. Cuyahoga No. 108983, 2020-Ohio-3460, at ¶ 41. (“The testimonial and circumstantial evidence in the case at hand, along with the law regarding complicity, supports a jury finding that [Kevin] Bradley either shot at the Cromitys, or aided and abetted the shooters, on April 4, 2018.”) Because of this, we cannot say that the jury lost its way in entering its verdicts or that the verdicts created a manifest injustice.

{¶ 20} Bradley’s third assignment of error is overruled.

B. The Verdicts are Not Inconsistent

{¶ 21} In his first assignment of error, Bradley asserts that the verdicts are logically inconsistent where he was convicted of felonious assault counts that required him to possess or use a firearm but was acquitted of the firearm specifications attached to those counts. Bradley's first assignment of error reads:

Appellant was denied due process of law by way of inconsistent verdicts, whereby the jury found appellant not guilty of firing a weapon, but guilty of injuring one and killing another victim by way of gunshot wound, and due process and Ohio law prohibits this court from otherwise presuming appellant's guilt in the face of such material, patent inconsistency.

{¶ 22} He argues that because the verdicts are inconsistent, his convictions require reversal, citing the Ohio Supreme Court opinion, *State v. Koss*, 49 Ohio St.3d 213, 551 N.E.2d 970 (1990). In *Koss*, in addition to determining the admissibility of evidence on battered women's syndrome as a defense, the Ohio Supreme Court found that a guilty verdict for voluntary manslaughter was inconsistent with an acquittal on the firearm specification where the victim died of a single gunshot wound. Bradley further asserts that the verdicts violate R.C. 2901.04. The state argues that this court has repeatedly rejected Bradley's arguments that an acquittal on specifications attendant to a conviction are inconsistent verdicts that require reversal and should continue do so.

{¶ 23} When a claim on appeal is made that a defendant was subject to inconsistent verdicts, we have determined that we will not disturb a conviction where we find the conviction is based on sufficient evidence, noting "defendants

receive adequate protection against jury irrationality or error by a sufficiency of the evidence review at the trial and appellate levels.” *State v. Jones*, 8th Dist. Cuyahoga No. 96901, 2012-Ohio-920, ¶ 10. In addressing *Koss*, appellate courts have declined to extend the holding beyond the factual circumstances in that case, in part, for this reason. As explained in *State v. Ayers*, 10th Dist. Franklin No. 13AP-18, 2013-Ohio-5601, ¶ 24:

This court, as have other appellate courts in Ohio, has over time limited the precedential impact of the decision in *Koss* in cases not involving voluntary manslaughter. Most recently, in *State v. Daron*, 10th Dist. [Franklin] No. 09AP-1086, 2010-Ohio-5713, we noted that “determinations made on the respective specifications do not alter findings of guilt on the underlying convictions.” *Id.* at ¶ 43, citing *State v. Trewartha*, 165 Ohio App.3d 91, 2005-Ohio-5697, ¶ 38 (10th Dist); *State v. Perryman*, 49 Ohio St.2d 14, 26, 358 N.E.2d 1040 (1976), *vacated in part on other grounds, Perryman v. Ohio*, 438 U.S. 911, 98 S.Ct. 3136, 57 L. Ed. 2d 1156 (1978); *State v. Crabtree*, 10th Dist. [Franklin] No. 09AP-1097, 2010-Ohio-3843, ¶ 19. In *Crabtree*, this court held that “[a]s long as sufficient evidence supports the jury’s verdict at issue, other seemingly inconsistent verdicts do not undermine the otherwise sufficient evidence.” *Id.* at ¶ 19. “A jury need not deliver rationally consistent verdicts in order for the verdicts to be upheld. * * * As long as sufficient evidence supports the jury’s verdict at issue, other seemingly inconsistent verdicts do not undermine the otherwise sufficient evidence.” *Id.* citing *Trewartha* at ¶ 15. *See also State v. Smith*, 10th Dist. Franklin No. 06AP-1165, 2007-Ohio-6772, ¶ 42.

Further, after *Koss*, the Ohio Supreme Court held an acquittal on a predicate offense in the context of compound offenses does not mandate reversal on the compound offense. *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, ¶ 81 “[I]nconsistent verdicts — even verdicts that acquit on a predicate offense while convicting on the compound offense — should not necessarily be interpreted as a

windfall for the Government at the defendant's expense." *United States v. Powell*, 469 U.S. 57, 65, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984).

{¶ 24} Since *Koss*, courts have continued to apply the above rationale to uphold verdicts that may at first blush seem logically inconsistent. In *State v. Allen*, 1st Dist. Hamilton No. C-090205, 2011-Ohio-829, ¶ 70, the conviction on aggravated burglary was upheld even though there was an acquittal on the accompanying firearm specifications. In *State v. Glenn*, 1st Dist. Hamilton No. C-090205, 2011-Ohio-829, ¶ 71, the court affirmed a conviction for aggravated robbery where the firearm specification resulted in acquittal after it found that the aggravated robbery charge was not dependent upon a finding of guilt on the firearm specification. In *State v. Talley*, 2d Dist. Montgomery No. 13683, 1993 Ohio App. LEXIS 6307 (Dec. 29, 1993), and *State v. Wilson*, 2d Dist. Clark No. 2803, 1992 Ohio App. LEXIS 340 (Jan. 21, 1992), the Second District Court of Appeals rejected challenges of inconsistent verdicts on felonious assault convictions where the jury has acquitted a defendant on attached firearm specifications.

{¶ 25} This court has "repeatedly held that a not guilty verdict with regard to a firearm specification is not inconsistent with a guilty verdict for aggravated robbery." *State v. Jackson*, 8th Dist. Cuyahoga No. 105541, 2018-Ohio-2131, ¶ 8, citing *State v. Williams*, 8th Dist. Cuyahoga No. 95796, 2011-Ohio-5483, ¶ 41, *State v. Fair*, 8th Dist. Cuyahoga No. 89653, 2008-Ohio-930, ¶ 23-26; *Browning v. State*, 120 Ohio St. 62, 71, 165 N.E. 566 (1929); see also *State v. Hardware*, 8th Dist.

Cuyahoga No. 93639, 2010-Ohio-4346, ¶ 16-17, and *State v. Howell*, 8th Dist. Cuyahoga No. 91569, 2009-Ohio-3092, ¶ 27.

{¶ 26} In resolving Bradley’s second assignment of error above, we find that there was sufficient evidence presented at trial for the jury to reasonably find Bradley guilty of the felonious assault charges as either a principal offender or as an accomplice. Accordingly, we do not find that the findings of acquittal on the firearm specifications are inconsistent with the convictions for felonious assault.

{¶ 27} Bradley also argues that because the verdicts are logically inconsistent, his convictions violate R.C. 2901.04. R.C. 2901.04 is a rule of statutory construction, which reads in relevant part:

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

{¶ 28} This statute is a rule of “statutory construction that provides that a court will not interpret a criminal statute so as to increase the penalty it imposes on a defendant if the intended scope of the statute is ambiguous.” *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582, ¶ 38. R.C. 2901.04 is limited to the interpretation of statutes. *Elmore* at ¶ 40; *State v. Jeffries*, 160 Ohio St.3d 300, 2020-Ohio-1539, 156 N.E.3d 859, ¶ 27 (“Because the rape-shield law governs the admissibility of evidence and does not define a crime or penalty, the rule of lenity is

not applicable.”). Any argument that R.C. 2901.04 would mandate the reversal of verdicts based on Bradley’s assertion the verdicts are inconsistent is misplaced.

{¶ 29} Bradley’s first assignment of error is overruled.

III. CONCLUSION

{¶ 30} At trial, Bradley was identified as one of three shooters who shot at a group of people, injuring one and killing another. His convictions for felonious assault are based on sufficient evidence. Further, the convictions are not against the weight of the evidence where evidence indicated the shooting was part of a coordinated attack and where the jury was free to reconcile the evidence, assess the credibility of the witnesses, and weigh the evidence. The jury’s verdicts convicting appellant of felonious assault but acquitting him of attached firearm specifications are not inconsistent verdicts that require reversal of the convictions where the felonious assault convictions are based on sufficient evidence to allow the jury to find that Bradley acted as the principal offender or an accomplice.

{¶ 31} Judgment affirmed.

It is ordered that appellee recover of 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 appeal 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.

MICHELLE J. SHEEHAN, JUDGE

LARRY A. JONES, SR., P.J., and
EILEEN T. GALLAGHER, J., CONCUR