

[Cite as *State v. Jackson*, 2019-Ohio-3357.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

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| STATE OF OHIO, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| | : | No. 107567 |
| v. | : | |
| | : | |
| TABITHA JACKSON, | : | |
| | : | |
| Defendant-Appellant. | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART,
AND REMANDED

RELEASED AND JOURNALIZED: August 15, 2019

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

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Gregory J. Ochocki, Assistant Prosecuting
Attorney, *for appellee*.

Mark A. Stanton, Cuyahoga County Public Defender, and
Noelle A. Powell, Assistant Public Defender, *for appellant*.

PATRICIA ANN BLACKMON, J.:

{¶ 1} Tabitha Jackson (“Tabitha”) appeals her convictions for felonious assault, vandalism, menacing by stalking, and aggravated menacing by stalking and assigns the following errors for our review:

- I. Tabitha 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. Tabitha Jackson’s conviction for vandalism is 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 offense beyond a reasonable doubt.**
- III. Tabitha Jackson’s conviction for menacing by stalking is 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 offense beyond a reasonable doubt.**
- IV. Tabitha Jackson’s conviction for aggravated menacing by stalking is 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 offense beyond a reasonable doubt.**
- V. Tabitha 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.**

{¶ 2} Having reviewed the record and pertinent law, we reverse Tabitha’s felonious assault convictions, affirm her remaining convictions, vacate her sentence and remand this case for resentencing.

Facts and Procedural History

{¶ 3} On September 19, 2017, Tabitha, along with her daughters Shanika Jackson (“Shanika”) and Victoria Jackson (“Victoria”), was charged in an 11-count indictment with four counts of aggravated burglary, two counts of felonious assault, one count of vandalism, one count of menacing by stalking, one count of aggravated menacing, and one count of criminal damaging. The burglary and felonious assault charges included one- and three-year firearm specifications, and the menacing by stalking charge included a furthermore clause, alleging that the defendants trespassed on the land where the victim lives. The defendants waived their right to a jury trial, and the case proceeded to a bench trial.

{¶ 4} The evidence showed that Shanika and Antonio Bland were, at one time, boyfriend and girlfriend, but Bland ended the relationship in April or May of 2017. After the breakup, Shanika repeatedly called Bland and sent him harassing text messages. Bland testified that Shanika also broke into his car, broke into his house, pulled a gun on him, and vandalized his property. Bland called the police several times and made police reports on seven different occasions. According to Bland, Shanika broke into his truck on June 26, 2017, and stole his license plates. The license plates were never recovered, and he had to purchase new ones. On July 3, 2017, Shanika broke into his house and stole an expensive pair of shoes she had previously given to him as a Father’s day present.

{¶ 5} Bland testified that Shanika sent him text messages threatening to attack his new girlfriend, Ivelyn Ortiz. He received text messages that read: “I see

your girl” and “I see your bitch walking with your daughter. I should do something to her.” Bland further testified that on August 20, 2017, Shanika, Tabitha, and other members of the Jackson family came to Bland’s house “specifically to beat up [his] girlfriend.” They arrived at the house yelling “Bring her outside!” Bland shut and locked the door because he “didn’t want her to get hurt.” He explained: “And because they could not get her, they started tearing up my truck.”

{¶ 6} Shanika and another unidentified woman smashed Bland’s 2016 Dodge Journey with a golf club and a bat. Bland recorded the incident on his cell phone from inside his home. The video was played in open court during trial and admitted into evidence. Bland identified Shanika as one of the women depicted in the video smashing his truck and Tabitha as the person “with the golf club.” Bland also identified Shanika’s voice saying: “Bitch, you could still get your ass whooped.” He testified that an unidentified woman depicted in the video wearing a blue bonnet flashed a gun at Bland before he started recording the scene. When asked what kind of damage the truck sustained, Bland replied that “it was destroyed” and “they broke all the windows.” Bland obtained a civil protection order against Shanika following this August 20, 2017 incident.

{¶ 7} Bland testified that Shanika nevertheless continued to harass him “over and over,” and he authenticated numerous text messages he received from Shanika in August 2017, threatening and disparaging Bland and Ortiz.

{¶ 8} On September 6, 2017, at approximately 7:00 p.m., Bland was cooking dinner for Ortiz because it was her birthday. While the food was cooking, Ortiz and

Bland were sitting on the couch watching television when they observed Victoria coming down the street. Bland told Ortiz to call 911, and both Bland and Ortiz spoke to the dispatcher. A recording of the 911 call was played in open court and admitted into evidence. Bland watched Victoria through a glass storm door as he gave the dispatcher a description of her appearance. He noticed seven or eight people with Victoria on the corner of East 115th Street and Harvey Avenue. Bland's house is located near the intersection. Bland testified that he "panicked." He "thought [his] life was over," because Shanika's family members had previously smashed his truck and brandished a firearm.

{¶ 9} According to Bland, Shanika approached the front door holding a golf club. Referring to Ortiz, Shanika screamed: "I want you!" and smashed the glass storm door with the golf club. Bland observed two other people, including Tabitha, trying to come through the door. He shot at them to keep them out and a bullet struck Shanika in the arm. Bland approached the doorway, and someone outside started shooting back at Bland. He explained: "I don't know who it was that was shooting, but I seen the flash and I start shooting some more." As a result of the incident, Shanika, Tabitha, and Victoria sustained nonfatal gunshot wounds.

{¶ 10} Kristen Koeth, a firearms expert in the Regional Forensic Science Laboratory of the Cuyahoga County Medical Examiner's Office, testified that she examined cartridge cases found at the scene and determined they were produced by two different firearms, Bland's Glock and another unknown 9 mm gun. Thirteen of

the cartridge cases came from Bland's Glock and five cartridge cases were fired by the other unidentified gun.

{¶ 11} Detective Michael Hale of the Cleveland Police Department Crime Scene Investigation Unit testified that he collected evidence from the crime scene, including all the cartridge cases. He testified that he found one set of cartridge cases "right by the front doorway of the house." He found the other set by the intersection of East 115th Street and Harvey Avenue. Detective Hale explained that it is possible more than five shots were fired from the intersection and that passing cars could have dislodged them from that location.

{¶ 12} Cleveland Police Detective Shane Bauhof responded to the scene, which was reported as an "active shooter" situation, and conducted the follow-up investigation. He separately questioned Bland, Ortiz, Shanika, Tabitha, and Victoria. Tabitha told him that Victoria was not present during the September 6, 2017 incident. Detective Bauhof knew this statement was untrue because Victoria was shot during the incident. Victoria told Detective Bauhof that she and Tabitha were walking down the street and Bland came out and shot them in the street for no reason. According to Detective Bauhof, Victoria did not "put Shanika on the scene at all."

{¶ 13} Shanika admitted to Detective Bauhof that she was present during the September 6, 2017 incident, but told a different story. Shanika told Detective Bauhof that her mother, Tabitha, called her multiple times, first to tell her that Victoria had been "jumped" by Bland and Ortiz. Tabitha called Shanika a second time to say that

Tabitha was “jumped” along with Victoria. Shanika told Detective Bauhof that she went to her mother’s house and found that her family “was all over.” She told Detective Bauhof that her sister, Victoria, was drunk, “wanted to beat some ass,” and decided to go to Bland’s house. Shanika chased her on foot and Tabitha followed. According to Shanika, Victoria smashed the glass storm door. After Victoria broke the glass, Tabitha came in front of the house and Bland shot her.

{¶ 14} As part of the investigation, Detective Bauhof searched Bland’s phone and retrieved his text messages and videos. The search revealed that Bland’s phone received numerous phone calls and text messages from Shanika’s phone, but no outgoing calls or texts were made from Bland’s phone to Shanika’s phone. The search also revealed that Bland received a text from Shanika’s phone on September 6, 2017, at 4:59 p.m., stating that Shanika had “no interest in causing harm to you or your lady friend,” but warning that her sister and family are “coming sooner or later” to Bland’s house. It is undisputed that Shanika showed up at Bland’s door later that day.

{¶ 15} The defense called Imari Jackson (“Imari”), Shanika’s 18-year old daughter, as the sole defense witness. Imari testified that on September 6, 2017, she and Shanika were at home when Tabitha called them and told them there had been an altercation between herself, Victoria, and Bland. Shanika told Tabitha to call the police and wait until Shanika got there. Shanika and Imari arrived at Tabitha’s house shortly thereafter and found everyone sitting on the porch waiting for the police. Even though they were waiting for the police, Shanika, Victoria, Tabitha, and Imari

left Tabitha's house and walked to Bland's house, which was located a few blocks away.

{¶ 16} When they arrived at Bland's house, Ortiz started arguing with Shanika about an altercation they had earlier that day. According to Imari, Ortiz was standing on the porch and Shanika was standing in the middle of the street. Meanwhile, Victoria picked up a stick that she found in the street, threw it at the glass storm door, and broke it. Thereafter, Bland came out and started shooting at the Jacksons, who were still in the street. The Jacksons ran to the end of the street and discovered that Victoria had been shot and was on the ground. Tabitha tried to help her, but Bland shot her too. Imari denied seeing any other individuals with a gun that day.

{¶ 17} Imari watched the cell phone video showing Shanika and another woman smashing Bland's truck during cross-examination. She identified Shanika and Tabitha in the video, but denied that either of them were holding a golf-club. She claimed she was unable to see what they were holding and that the silver rod-shaped item looked like "a stick."

{¶ 18} The trial court granted Tabitha's Crim.R. 29 motion for acquittal, in part, and dismissed the gun specifications attendant to the burglary and felonious assault charges. The motion for acquittal was denied as to all other charges. At the conclusion of the trial, the court found Tabitha guilty of two counts of felonious assault, one count of vandalism, one count of menacing by stalking, and one count of aggravated menacing. Tabitha now appeals her convictions.

Sufficiency of the Evidence

{¶ 19} In the first four assignments of error, Tabitha argues her felonious assault, vandalism, menacing by stalking, and aggravated menacing convictions are not supported by sufficient evidence.

{¶ 20} 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).

{¶ 21} 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).

Complicity

{¶ 22} The state's theory of criminal liability for all counts against Tabitha was based on complicity, also known as "aiding and abetting." The Ohio Supreme

Court has held that “to support a conviction for complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), 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, 245-246, 754 N.E.2d 796 (2001). However, the mere presence of a defendant at the scene of a crime, without more, is not sufficient to demonstrate that the defendant aided or abetted the principal. *State v. Newell*, 8th Dist. Cuyahoga No. 106584, 2019-Ohio-976, ¶ 75.

{¶ 23} Aiding and abetting, including the requisite intent, may be inferred from the circumstances surrounding the crime, including presence, companionship, and conduct before and after the offense is committed. *State v. Wingfield*, 8th Dist. Cuyahoga No. 107196, 2019-Ohio-1644, ¶ 67.

Felonious Assault

{¶ 24} Tabitha was convicted of two counts of felonious assault, in violation of R.C. 2903.11(A)(2), which states that “[n]o person shall knowingly * * * [c]ause or attempt to cause physical harm to another * * * by means of a deadly weapon or dangerous ordnance.” The indictment alleged that the defendants attempted to harm Bland and Ortiz by means of “a firearm and/or metal pipe and/or golf club.”

{¶ 25} It is undisputed that neither victim was injured by any of the defendants. Although Bland testified that a man outside the house fired gunshots at him as he stood in the doorway, this individual was never identified, so it is unclear if he was cooperating with defendants. The only members of Shanika’s family who

were identified by the evidence are women. Therefore, there was insufficient evidence that Tabitha attempted to cause physical harm to the victims by means of a firearm.

{¶ 26} Bland testified that Shanika screamed “I want you!” at Ortiz when she smashed the glass in the storm door with a golf club. “That’s when they — both of them tried to protrude, tried to come in. And it’s like, when they tried to come in, they — they got stuck somehow and backed off. That’s when I opened fire.” Bland further testified that “they” were Shanika, Tabitha, and Victoria. Ortiz testified that, after Shanika smashed the storm door, Shanika “put one foot in” the doorway before Bland shot her. According to Ortiz, Tabitha never tried to enter the house.

{¶ 27} For Tabitha to be guilty of felonious assault under a complicity theory in the instant case, the state was required to prove that Shanika attempted to cause physical harm to Bland and Ortiz, because no actual physical harm was inflicted. R.C. 2923.02(A), which defines attempt, states that “[n]o person, purposely or knowingly, shall engage in conduct that, if successful, would constitute or result in the offense.”

{¶ 28} “This language establishes that the essential elements of a criminal attempt are the mens rea or purpose or knowledge, and conduct directed toward the commission of an offense. The statute does not, however, indicate how far this conduct must proceed toward the actual consummation of the crime in order to be considered an attempt to commit that crime.” *State v. Brooks*, 44 Ohio St.3d 185, 190, 542 N.E.2d 636 (1989).

{¶ 29} Upon review, we find insufficient evidence to show that Tabitha, via Shanika's conduct, knowingly attempted to cause physical harm by means of a deadly weapon to Bland and Ortiz. This court has held that, to prove attempt, a defendant's conduct must include a "substantial step toward the commission of a crime * * *." *State v. Clark*, 8th Dist. Cuyahoga No. 58270, 1991 Ohio App. LEXIS 3352 (June 27, 1991). "[T]here must be some overt act directed toward physical harm which is beyond behavior that merely causes another to believe physical harm is imminent. Where the latter occurs the crime is aggravated menacing not felonious assault." *Id.* See also *In re R.W.*, 8th Dist. Cuyahoga No. 91923, 2009-Ohio-1255 (reversing a felonious assault conviction for insufficient evidence when the defendant fired a gun outside into the air and the alleged victims were inside the house). "Although bullets shot in the air will obviously come down somewhere, [the victims] could not have been injured when the bullets came down. As there was no risk of injury to the victims alleged in the indictment, R.W. did not knowingly attempt to cause them physical harm when he fired his gun into the air." *Id.* at ¶ 21.

{¶ 30} The 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. Shanika used the club to smash the glass front door of Bland's house while Bland and Ortiz were inside the home. Shanika tried to enter the doorway but was unsuccessful because Bland shot her. Nobody testified that Shanika swung the club or even attempted to swing the club after smashing the glass. While we cannot condone Tabitha and her family's

conduct, we find no evidence of an overt act that could have physically injured Bland or Ortiz.

{¶ 31} We also note that the court found Tabitha and Shanika not guilty of aggravated burglary under R.C. 2911.11(A)(1) and (2), which states as follows:

(A) No person, by force, stealth, or deception, shall trespass in an occupied structure * * * when another person * * * is present, with purpose to commit in the structure * * * any criminal offense, if * * *:

(1) The offender inflicts, or attempts or threatens to inflict physical harm on another; [or]

(2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

{¶ 32} 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. Accordingly, there is insufficient evidence in the record of felonious assault and Tabitha's convictions on counts one through four are reversed. Tabitha's first assigned error is sustained.

Vandalism

{¶ 33} Tabitha was convicted of vandalism in violation of R.C. 2905.05(A), which states that "[n]o person shall knowingly cause serious physical harm to an occupied structure or any of its contents." The indictment alleged that Tabitha committed the vandalism, as an aider and abettor, on September 6, 2017.

{¶ 34} Bland testified that Shanika smashed the glass in his storm door with a golf club and that Tabitha was present with her on the front steps. As previously

stated, Shanika and her family members smashed the windows on Bland's truck on August 20, 2017, and Tabitha was holding the golf club during that incident. Tabitha's presence at both the August 20, 2017, and the September 6, 2017 incidents demonstrates that she shared Shanika's intent to break Bland's glass storm door on September 6, 2017. Therefore, there was sufficient evidence to prove that Tabitha was complicit in that act of vandalism.

Menacing by Stalking and Aggravated Menacing

{¶ 35} Tabitha was convicted of menacing by stalking in violation of R.C. 2903.211(A)(1), which states, in relevant part:

No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. * * *

Tabitha was also convicted of aggravated menacing in violation of R.C. 2903.21(A), which states, in relevant part, that "[n]o person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family."

{¶ 36} The evidence showed that Shanika made phone calls and sent numerous threatening text messages to Bland. Shanika and her family members twice came to Bland's house with the intent to cause harm, and they caused serious damage to Bland's truck and storm door on two different dates. Shanika sent Bland a text on September 6, 2017, warning that her family was "coming sooner or later."

These actions demonstrate a pattern of conduct designed to cause Bland to believe that Shanika and/or her family were going to cause him and/or Ortiz physical harm. Tabitha, who is a member of Shanika's family, participated in both threatening events by accompanying her daughter to Bland's house and carrying a golf club in the first incident. Her actions indicate she also wanted Bland to believe that Shanika would cause physical harm to Bland and/or Ortiz. Therefore, there was sufficient evidence to support Tabitha's menacing by stalking and aggravated menacing convictions.

{¶ 37} Tabitha's second, third, and fourth assignments of error are overruled.

Manifest Weight of the Evidence

{¶ 38} In the fifth assignment of error, Tabitha argues her convictions are against the manifest weight of the evidence.

{¶ 39} 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 C 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.

{¶ 40} 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.*

{¶ 41} Bland and Ortiz described the events of September 6, 2017, at trial, and their testimony was remarkably consistent. They both identified Shanika as the individual who broke the glass storm door and they both stated that she used a golf club. Their testimony at trial was also consistent with their prior statements to police, which were taken separately and independently of each other. By contrast, the defendants’ statements to Detective Bauhof regarding the events of September 6, 2017, were remarkably inconsistent. Victoria told Detective Bauhof that she and Tabitha were walking down the street and Bland came out of his house and shot them for no reason. Tabitha told him that Victoria was not present at Bland’s house on September 6, 2017, even though she was shot during the incident. And according to Victoria, Shanika was not present during the September 6, 2017 incident either, even though she admitted she was there.

{¶ 42} According to Imari Jackson, the defendants' only witness, Victoria, happened to find a baton lying in the street, threw it at Bland's glass storm door, and broke it. Imari also testified that Shanika's family, including Tabitha, were waiting for the police when she arrived at Tabitha's home with her mother. Yet, they left Tabitha's house and walked to Bland's house before the police arrived. In light of the totality of the evidence presented at trial we find Imari's trial testimony less credible than that of Bland and Ortiz. We also find the inconsistent statements provided to police by Shanika, Victoria, and Tabitha lack credibility. Therefore, this is not an exceptional case where the evidence weighs heavily against conviction.

{¶ 43} The fifth assignment of error is overruled.

{¶ 44} Judgment affirmed in part and reversed in part. Sentence vacated. Case remanded for resentencing.

It is ordered that appellant and appellee equally share 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.

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, A.J., CONCURS;
EILEEN T. GALLAGHER, J., DISSENTS IN PART
AND CONCURS IN PART WITH SEPARATE OPINION

EILEEN T. GALLAGHER, J., DISSENTING IN PART AND CONCURRING IN PART:

{¶ 45} Tabitha was found guilty as an accomplice of one count of felonious assault under R.C. 2903.11(A)(2). Although the trial court found Tabitha and Shanika not guilty of burglary, presumably because Shanika never completed the act of trespass in an occupied structure, the elements of felonious assault did not require proof that Shanika completely entered the victims' home. Felonious assault under R.C. 2903.11(A)(2) merely requires the state to prove that the principal offender *attempted* to cause serious physical harm to the victims by means of a deadly weapon. To prove attempt, the state only needed to establish that the principal offender, Shanika, took "a substantial step toward the commission of a crime * * *." *Clark*, 8th Dist. Cuyahoga No. 58270, 1991 Ohio App. LEXIS 3352 (June 27, 1991).

{¶ 46} Bland testified that Shanika smashed the glass in his storm door with a golf club while screaming "I want you!" She had previously threatened, in a series of text messages, to seriously injure both Bland and Ortiz. Bland testified that after smashing the glass, Tabitha took a step across the threshold in an attempt to enter the home before Bland shot at her and repelled her away. In my view, Shanika's foot inside the door, coupled with smashing the storm door in order to gain entrance,

constituted an overt act sufficient to establish an attempt to cause the victims serious physical harm with the golf club. I, therefore, respectfully dissent from the majority's decision to reverse Tabitha's felonious assault conviction, but concur with its decision to affirm the remaining convictions.