

[Cite as *State v. Hunt*, 2010-Ohio-1419.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93080

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

NINA HUNT

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-518149

BEFORE: McMonagle, J., Rocco, P.J., and Boyle, J.

RELEASED: April 1, 2010

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).
CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant Nina Hunt appeals her conviction for felonious assault rendered after a jury trial. We affirm.

{¶ 2} Hunt and her brother Carlos Fisher were jointly indicted. The indictment charged the following relative to Hunt: Count 1, attempted murder; Count 2 felonious assault; Count 3, improperly discharging a firearm at or into a habitation; and Count 4, carrying a concealed weapon. Counts 1, 2, and 3 contained one-, three-, and five-year firearm specifications and forfeiture specifications, and Count 4 contained a forfeiture specification.

{¶ 3} Hunt and Fisher's trials were bifurcated. Hunt waived her right to a jury trial on the forfeiture specifications; the remainder of her case was tried to a jury. The trial court overruled her Crim.R. 29 motion for acquittal. The jury found Hunt guilty of felonious assault with the firearm specifications and of carrying a concealed weapon, but not guilty of attempted murder and improperly discharging a firearm at or into a habitation and the accompanying firearm specifications. The court found Hunt guilty on the forfeiture specification of Count 2, but not guilty on the forfeiture specification of Count 4. The court sentenced her to a ten-year prison term.

{¶ 4} Before addressing the merits of Hunt's appeal, we consider appellate jurisdiction. In *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 839 N.E.2d 163, the Ohio Supreme Court held that "a judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty

plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *Id.* at ¶18. The Court explained that “[s]imply stated, a defendant is entitled to appeal an order that sets forth the manner of conviction and sentence.” *Id.*

{¶ 5} Here, the court’s initial entry of conviction failed to mention the finding of guilt on the forfeiture specification of Count 2. Accordingly, the court issued a subsequent entry, to amend the original entry, and “complete[] disposition of all counts and all parts thereof[,]” and found Hunt guilty of the forfeiture specification of Count 2 and not guilty of the forfeiture specification of Count 4. The entry further ordered Hunt “to forfeit all right, title and interest in one (1) 9 mm hi-point handgun, serial no. P1233541.” The court issued another entry, which “synthesize[d] the court’s two prior entries setting forth the means and manner of conviction and the court’s sentencing herein as required by *State v. Baker*[,]” and addressed all the counts and specifications, and contained the forfeiture language mentioned above.

{¶ 6} The issue for our consideration, which was briefed by the parties upon this court’s request, is whether the forfeiture language is sufficient to create a final appealable order. Hunt believes that because the court did not order the return of the gun to a specific entity (i.e., the state or a political subdivision), the entry is not final and appealable. The State, on the other

hand, contends that the entry complies with *Baker* and therefore is final and appealable. We agree with the State.

{¶ 7} Although it is true that no mention is made in the trial court's entries of what entity the gun is to be forfeited to, forfeited property is generally delivered "to the law enforcement agency involved in the initial seizure of the property[,]" ¹ which in this case was the Euclid Police Department. This case is distinguishable from *State v. Byrd*, Cuyahoga App. No. 91090, 2009-Ohio-1876. There, this court found that there was no final appealable order from a judgment setting forth the defendant's finding of guilt and sentence on drug trafficking, drug possession, and possession of criminal tools, with forfeiture specifications, because the judgment neither described the forfeited property nor ordered it to be forfeited. Here, however, the trial court specifically described the gun to be forfeited and ordered it forfeited.

{¶ 8} In light of the above, the order is final and appealable and we proceed to the merits of the appeal.

{¶ 9} The State's theory of the case was that Hunt was an aider and abettor to co-defendant Carlos Fisher and the following facts were elicited at trial. Hunt and the victim, Antonio Harris, had dated for a couple of years

¹R.C. 2981.06, governing the issuance of orders regarding forfeited property.

and had a son together. The day before the incident, Harris ended the relationship; according to Harris, this was upsetting to Hunt.

{¶ 10} The day following the break-up, the son was visiting with Harris at a relative's house and Hunt, the custodial parent, went to the relative's house to pick him up. Harris asked Hunt for a cell phone that the two had been sharing; she gave it to him and left with their son. According to Harris, shortly after Hunt left, he, his aunt Jeanette Harris, and cousin Jerrell Harris all left the house by car to go to Jeanette's house. En route to Jeanette's house, Harris realized that Hunt was following them. He had his aunt drop him off in a commercial district, partly so that he could fill out job applications and partly so that Hunt would not follow him to Jeanette's house.

{¶ 11} Harris testified that as he walked to various businesses, Hunt was still following him and tried to hit him with her car. His last stop was at a Burger King restaurant. He testified that although he lost sight of Hunt, she called him and told him that she knew where his aunt lived. A friend picked Harris up from the restaurant and drove him to his aunt's house.

{¶ 12} Approximately 20 minutes after he arrived at his aunt's house, Harris received a phone call from Hunt saying she was outside of the house. Harris and Jerrell went outside. Harris testified that as he was coming out of his aunt's house, Hunt, who had been in the driver's seat of her car, was getting out of the car and approaching him in an aggressive manner,

demanding the cell phone back. Hunt's brother, co-defendant Fisher, was in the front passenger seat. Harris testified that he and Hunt exchanged words; Hunt then grabbed him and attempted to hit him. Harris said that he held Hunt back so that she could not hit him.

{¶ 13} At that point, Fisher got out of the car, approached Harris, and Fisher and Harris then got into a physical altercation. When the altercation ended, Fisher and Hunt returned to their car, while Harris remained in the yard. Jerrell, who was standing near the car, testified that Hunt got a gun from the glove compartment and he tried to take it from her. While Jerrell was struggling with Hunt for control of the gun, Hunt gave the gun to Fisher; both Harris and Jerrell testified that they heard Hunt say something to the effect of "here" as she handed the gun to Fisher. By this time, Harris was standing near the driveway. Jerrell testified that Hunt pulled the car up by the driveway and both Jerrell and Harris testified that Fisher shot three times in Harris's direction.

{¶ 14} Jeanette heard the gunshots from inside her house. She looked out a window, saw Hunt driving away, and called the police. The police apprehended Hunt and Fisher a short distance from the scene and located a handgun under the front passenger seat. Three shell casings were also located inside the vehicle. Both Hunt and Fisher tested positive for gunshot

residue on their hands. There were two bullet holes in Jeanette's garage door and one in the side of her house.

{¶ 15} In an oral statement to the investigating detective, Hunt said that she went to Jeanette's house with her brother so that her brother could "kick [Harris's] ass." She explained that she was upset with Harris for "snatching" the cell phone away from her. Hunt also told the detective that the gun belonged to her and that she, not her brother, fired the shots. According to Hunt, nobody was in the area when she fired the gun and she only did so out of anger.

{¶ 16} In her sole assignment of error, Hunt contends that the evidence was insufficient to sustain the felonious assault conviction. An appellate court's function in 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. 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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 17} Hunt contends that the evidence was insufficient to sustain a conviction against her as an aider and abettor because "she may have been

negligent in handing the gun to [Fisher], but she did not know [he] would point the gun towards anyone or pull the trigger.” We disagree.

{¶ 18} R.C. 2923.03(A)(2) and (F) provides that one who aids and abets another in committing an offense is guilty of the crime of complicity and may be prosecuted and punished as if she were the principal offender. See, also, *State v. Graven* (1977), 52 Ohio St.2d 112, 115-116, 369 N.E.2d 1205. Under R.C. 2903.11, the State had to prove that Hunt, as either an aider or abettor or the principal offender, “knowingly attempt[ed] to cause physical harm to [Harris] by means of a deadly weapon or dangerous ordnance.”

{¶ 19} It is common knowledge that a firearm is an inherently dangerous instrumentality, use of which is reasonably likely to produce serious injury or death. *State v. Widner* (1982), 69 Ohio St.2d 267, 270, 431 N.E.2d 1025. Courts have consistently held that shooting a gun in a place where there is risk of injury to one or more persons supports the inference that the offender acted knowingly. See, e.g., *State v. Brooks* (1989), 44 Ohio St.3d 185, 192, 542 N.E. 2d 636; *State v. Ivory*, Cuyahoga App. 83170, 2004-Ohio-2968, ¶6; *State v. Roberts* (Nov. 9, 2001), Hamilton App. No. C-000756, citing *State v. Gregory* (1993), 90 Ohio App.3d 124, 628 N.E.2d 86; and *State v. Phillips* (1991), 75 Ohio App.3d 785, 792, 600 N.E.2d 825.

{¶ 20} “A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a

certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.” R.C. 2901.22(D).

{¶ 21} “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶ 22} There was sufficient evidence here that Hunt acted “knowingly” rather than “negligently” in giving the gun to Fisher. In particular, both Harris and Jerrell testified about the heated nature of the encounter at Jeanette’s house, which involved Fisher physically fighting with Harris. Harris and Jerrell also testified that Hunt retrieved the gun, handed it to Fisher, and said “here,” while they were still on the scene. Further, according to Hunt’s statement to the police, she brought her brother to Jeanette’s house so that her brother could “kick [Harris’s] ass.”

{¶ 23} In light of the evidence, the trial court properly denied Hunt’s Crim.R. 29 motion for acquittal and her sole assignment of error is therefore overruled.

{¶ 24} 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 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.

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., and
MARY J. BOYLE, J., CONCUR