

[Cite as *State v. Kennedy*, 2011-Ohio-332.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94751**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**REAF J. KENNEDY**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-527931

**BEFORE:** Jones, J., Celebrezze, P.J., and Cooney, J.

**RELEASED AND JOURNALIZED:** January 27, 2011

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**LARRY A. JONES, J.:**

{¶ 1} Defendant-appellant, Reaf Kennedy (“Kennedy”), appeals his conviction for aggravated riot and resisting arrest. Finding no merit to the appeal, we affirm.

{¶ 2} Kennedy was charged with two counts of aggravated riot and one count of resisting arrest. He was charged with three codefendants, each of whom

eventually pled guilty. Kennedy's case proceeded to a trial before the bench, at which the following pertinent evidence was adduced.

{¶ 3} Shortly after midnight on August 6, 2009, three Cleveland police officers arrived at 2905 Erin Avenue in response to a call that a male had a bat. When the officers arrived, a woman in the house told police that there were people fighting with weapons in the backyard. The officers went to the backyard and observed a chaotic scene with 20-30 people yelling and fighting. The police attempted to break up the fight and ordered people to leave.

{¶ 4} Two of Kennedy's codefendants, Leonard Curtis ("Curtis") and Shawnda Cliff ("Cliff"), began to harass the officers, and the officers became concerned for their own safety. Officers Timothy Maffo-Judd ("Maffo-Judd") and Frank Costanzo ("Costanzo") tried to restrain and handcuff Curtis, while the third officer radioed for backup. While Maffo-Judd was handcuffing Curtis, Cliff grabbed his back and told him "this is bulls\*\*\*, f\*\*\* you guys." Maffo-Judd ordered her to stand back, but she grabbed the officer again and so the officers arrested her.

{¶ 5} While this was happening, officers heard another male, later identified as Kennedy, "inciting the crowd" with a voice that could be heard above all others, yelling "this is f\*\*\*ed up," "this is bull\*\*\*," and "you [the police] shouldn't be doing this." Maffo-Judd testified that Kennedy was yelling that he had been to jail before and was not going to go back and he (Kennedy) acted like a "cheerleader" egging on the crowd, with the crowd reacting to his statements. Maffo-Judd

testified that it was obvious the crowd had been drinking. Further, many in the crowd were holding sticks and pieces of wood in their hands waving them. The officer admitted that he and his fellow officers feared for their safety because they did not know if anyone in the crowd had additional weapons, they were greatly outnumbered, and the crowd was angry.

{¶ 6} Although every zone car in the district responded to the scene, it took police an additional 30 minutes after Curtis's arrest to get the crowd under control.

The police arrested Kennedy, who continued with his belligerent comments, even after being handcuffed and taken to the police station.

{¶ 7} The trial court convicted Kennedy of one count of aggravated riot and resisting arrest and sentenced him to one year of community control sanctions. The court also ordered forfeiture of a knife police found on the scene.

{¶ 8} Kennedy now appeals, raising the following two assignments of error, which will be combined for review:

"I. The trial court erred in denying appellant's motion for acquittal as to the charges when the state failed to present sufficient evidence to sustain a conviction.

"II. Appellant's convictions were against the manifest weight of the evidence."

{¶ 9} When an appellate court reviews a record upon a sufficiency challenge, "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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶77, quoting *State*

*v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 10} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether 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.” (Internal quotes and citations omitted.) *Leonard* at ¶81.

{¶ 11} The trial court convicted Kennedy of aggravated riot, in violation of R.C. 2917.02(A)(2), which provides that “[n]o person shall participate with four or more others in a course of disorderly conduct in violation of section 2917.11 of the Revised Code \* \* \* [w]ith purpose to commit or facilitate the commission of any offense of violence.”

{¶ 12} Kennedy argues that there was insufficient evidence that he participated with “four or more persons” because only three other people were arrested and indicted. But there is no requirement that the other individuals involved in the riot need to be arrested, indicted, or even identified. See *In re T.K.*, Cuyahoga App. No. 84934, 2005-Ohio-2321; *State v. Mercado*, Marion App. No. 9-06-68, 2008-Ohio-3219. In this case, there was substantial evidence presented that Kennedy was involved in disorderly conduct with more than just his

codefendants. Officer Maffo-Judd testified that 20-30 people were fighting when police arrived and that many of those people remained even after the police ordered the crowd to disperse. Kennedy began to yell and swear at officers. Officer Costanzo testified that Kennedy was commenting to the crowd, which seemed to “really fuel the fire,” and caused the energy of the crowd to rise in response. Once handcuffed, Kennedy continued to act “irrationally,” pushing himself into a pile of people and the police officers.

{¶ 13} The trial court also convicted Kennedy of resisting arrest, in violation of R.C. 2921.33(A), which provides that “[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another.” Kennedy claims that he did not interfere with Curtis’s arrest. But the testimony at trial was that while the police were trying to arrest Curtis, Kennedy was yelling, using profanity, bouncing around, and acting in a very aggressive manner. Therefore, we find that there was sufficient evidence to sustain the convictions for aggravated riot and resisting arrest.

{¶ 14} We also do not find that the convictions were against the manifest weight of the evidence. Testimony at trial established that Kennedy was part of a large group of people fighting. He could be heard above the crowd yelling and swearing at police, instigating the crowd. The police officers feared for their own safety because they were greatly outnumbered by angry and apparently inebriated partygoers, many of whom had pieces of wood they could use as weapons.

{¶ 15} The first and second assignments of error are overruled.

{¶ 16} Accordingly, judgment is 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. 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.

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LARRY A. JONES, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR