[Cite as *State v. Davis*, 2023-Ohio-2386.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellee, :

No. 112072

v. :

GREG DAVIS, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 13, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-670971-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Dominic Neville, Assistant Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and Noelle A. Powell, Assistant Public Defender, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} Appellant Greg Davis appeals his convictions and the indefinite sentence imposed in this case. Upon review, we affirm the judgment of the trial court.

{¶ 2} On June 7, 2022, Davis was charged in a four-count indictment with offenses arising from a shooting incident that occurred on or about May 28, 2022. Davis pleaded not guilty to the charges, and the case proceeded to trial in September 2022.

{¶ 3} At trial, V.S. ("the victim") testified to the incident that occurred on the night of May 28, 2022. After the victim received a call from his stepdaughter, he returned home to find her "shook up" by an encounter with Davis, who lives across the street from the victim. The victim pulled into the end of Davis's driveway and walked up to the front door. He knocked on the door, but Davis did not answer. The victim testified that as he was returning to his car to leave and had his back turned toward Davis's house, he heard Davis cuss and tell him to get out of his yard and then heard a gunshot. The victim got into his car, drove across the street, and called the police. The victim testified that he did not have prior contact with Davis that night, that he was not carrying a weapon, and that he never really had any problems with Davis.

{¶ 4} The victim's stepdaughter recorded the incident on her phone. The video showed that Davis opened his door, pointed his gun in the direction of where the victim testified that he was standing in the driveway, ordered the victim to "get the 'F' out of my driveway," and then discharged his firearm. A first-floor window of another neighbor's house was broken. Shotgun pellets were found by the window and at the end of Davis's driveway.

{¶ 5} When responding officers arrived sometime between 1:30 and 2:00 a.m., Davis was no longer at his house. He was later found walking about a block from his house and was arrested. No weapon was found. Other testimony and evidence were introduced.

{¶ 6} The jury found Davis guilty of Count 1, felonious assault (victim V.S.) in violation of R.C. 2903.11(A)(2), a felony of the second degree, with one- and three-year firearm specifications; and Count 3, aggravated menacing (victim V.S.) in violation of R.C. 2903.21(A), a misdemeanor of the first degree. The jury found Davis not guilty of Count 4, aggravated menacing (victim K.K.). The trial court found Davis guilty of Count 2, having weapons while under disability in violation of R.C. 2923.13(A)(2), a felony of the third degree.

{¶ 7} The trial court sentenced Davis on Count 1 to three years for the firearm specifications, to be served prior to and consecutive to the base sentence of a minimum of two years and a maximum of three years. The trial court sentenced Davis on Count 2 to nine months and on Count 3 to 180 days. The counts were run concurrent with each other and concurrent to a sentence imposed in another case.

{¶ 8} Davis timely filed this appeal.

{¶ 9} Under his first assignment of error, Davis claims that it was plain error for him to be convicted for both felonious assault and misdemeanor aggravated menacing, which he maintains are allied offenses of similar import. Davis claims that plain error occurred and that under the analysis articulated in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, the offenses of

felonious assault and aggravated menacing are allied offenses of similar import. In opposition, the state relies upon outdated authority applying former jurisprudence that compared the statutorily defined elements of the offenses in the abstract. *See State v. Swanson*, 7th Dist. Mahoning No. 05 MA 79, 2006-Ohio-4957, ¶ 9, citing *State v. Rance*, 85 Ohio St.3d 632, 634, 710 N.E.2d 699 (1999), paragraph one of the syllabus.[1]

{¶ 10} Both parties overlook that Davis was sentenced to a concurrent term of 180 days in jail for the misdemeanor offense of aggravated menacing, that he never sought a stay of execution, that he was granted 129 days of jail-time credit on January 11, 2023, and that he has voluntarily served and satisfied his jail sentence. Further, Davis has not asserted, nor can we discern, the existence of any collateral legal disability resulting from the misdemeanor conviction in this case. Therefore, the merger issue in this matter is moot. *See State v. Rickett*, 12th Dist. Clermont No. CA2020-08-051, 2021-Ohio-1765, ¶ 11 (appeal raising allied-offense issue was moot where the appellant voluntarily satisfied the misdemeanor sentence and no collateral disability was identified); *State v. Armstrong-Carter*, 2d Dist. Montgomery Nos. 28571 and 28576, 2021-Ohio-1110, ¶ 94-96; *State v. Boone,* 9th Dist. Summit No. 26104, 2013-Ohio-2664, ¶ 6-8; *State v. McGrath*, 8th Dist. Cuyahoga No. 85046, 2005-Ohio-4420, ¶ 9-12; *see also State v. Terry*, 8th Dist. Cuyahoga No. 81906, 2003-Ohio-3355, ¶ 2, citing *State v. Golston*, 71 Ohio St.3d

[1] The state is reminded that it should cite relevant and applicable authority when making arguments before this court.

224, 226, 643 N.E.2d 109 (1994). Accordingly, the first assignment of error is overruled.

{¶ 11} Under his second assignment of error, Davis claims his conviction for felonious assault is not supported by legally sufficient evidence.

{¶ 12} "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. 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.* "Circumstantial evidence and direct evidence inherently possess the same probative value" and the state may rely on circumstantial evidence to prove an essential element of an offense charged. *Jenks* at paragraph one of the syllabus. It is within the province of the factfinder "'fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *State v. McFarland*, 162 Ohio St.3d 36, 2020-Ohio-3343, 164 N.E.3d 316, ¶ 24, quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶ 13} Davis contends there was insufficient evidence to convict him of felonious assault in violation of R.C. 2903.11(A)(2), which provides 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." A person acts knowingly when "regardless of purpose, a person is aware that his or her conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B).

{¶ 14} Our review of the record reflects that the state presented sufficient evidence from which the factfinder could reasonably infer that Davis knowingly attempted to cause physical harm to the victim by means of a deadly weapon. The victim testified he was returning to his car that was in Davis's driveway and had his back turned to Davis when he heard Davis order him off of his property and a gunshot. The video evidence shows that Davis pointed his gun in the direction of where the victim indicated he was standing and that Davis yelled "get the 'F' out of my driveway" and then discharged his firearm. Shotgun pellets were recovered from the end of the driveway, and a neighbor's first-floor window was broken. Viewing this and other evidence that was presented in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense were proven beyond a reasonable doubt. We are not persuaded by Davis's arguments otherwise. The second assignment of error is overruled.

{¶ 15} Under his third assignment of error, Davis claims his convictions are against the manifest weight of the evidence. When evaluating a claim that a jury verdict is against the manifest weight of the evidence, "we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that we

must reverse the conviction and order a new trial." *State v. Wilks*, 154 Ohio St.3d 359, 2018-Ohio-1562, 114 N.E.3d 1092, ¶ 168, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Reversing a conviction based upon the weight of the evidence should occur "'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 16} In this case, the testimony and evidence showed that after the victim's stepdaughter had an encounter with Davis, the victim pulled into Davis's driveway and knocked on Davis's door, but Davis did not answer. As the victim was returning to his vehicle in Davis's driveway, Davis opened his front door, pointed his gun in the direction of the victim, ordered the victim to get out of his driveway, and discharged his firearm in the direction of the victim. When the police arrived, Davis was no longer home. He was located by the police about a block from his home.

{¶ 17} Although Davis contends that a weapon was never found and no ballistic analysis was done of the pellets, the testimony and evidence provided and reasonable inferences therefrom demonstrated that Davis was the person in the video who discharged a firearm in the direction of the victim. Davis also argues that the charge of aggravated menacing contains an element that the victim "believe" that the offender will cause serious physical harm. *See* R.C. 2903.21(A). However, the victim testified that when he heard the shot, he immediately fled from Davis's property and called the police. The victim credibly testified to feeling "scared." When the responding officers arrived, the victim stated: "He fired. He fired shots at

me." The victim was described as "looking like he was in distress." The trier of fact did not clearly lose its way in determining that the victim believed Davis meant to cause him serious physical harm.

{¶ 18} Upon our review of the entire record, we find this is not the exceptional case in which the evidence weighs heavily against the challenged convictions. The third assignment of error is overruled.

{¶ 19} Under his fourth assignment of error, Davis challenges the trial court's imposition of an indefinite sentence pursuant to S.B. 201, commonly referred to as the Reagan Tokes Law. Davis concedes that the same arguments he raises challenging the constitutionality of the Reagan Tokes Law were rejected by this court's en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536, ¶ 17-51 (8th Dist.), *discretionary appeal allowed,* 166 Ohio St.3d 1496, 2022-Ohio-1485, 186 N.E.3d 830. We continue to follow *Delvallie*, and "'[t]he trial court, as an inferior court, [is] required to follow the controlling authority of this [c]ourt's precedent unless the Ohio Supreme Court renders a decision to the contrary.'" *State v. Hall*, 8th Dist. Cuyahoga No. 112073, 2023-Ohio-2181, quoting *State v. McCormick*, 2d Dist. Montgomery No. 29607, 2023-Ohio-1303, ¶ 15.[2] Accordingly, we summarily overrule the fourth assignment of error.

{¶ 20} Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

---

[2] The Supreme Court of Ohio has yet to rule on the constitutionality of the Reagan Tokes Law, which is currently pending before the court. *See State v. Simmons*, Case No. 2021-0532, and *State v. Hacker*, Case No. 2020-1496.

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.

_____

SEAN C. GALLAGHER, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
EMANUELLA D. GROVES, J., CONCUR

N.B. Judge Emanuella D. Groves concurred with the opinions of Judge Lisa B. Forbes (dissenting) and Administrative Judge Anita Laster Mays (concurring in part and dissenting in part) in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.