[Cite as *State v. Evans*, 2023-Ohio-2688.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 111964
v.	:	
TIMOTHY EVANS,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART; VACATED IN PART; AND REMANDED
RELEASED AND JOURNALIZED: August 3, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-20-652785-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and John F. Hirschauer, Assistant Prosecuting Attorney, *for appellee*.

Susan J. Moran, *for appellant*.

LISA B. FORBES, J.:

{¶ 1} Timothy Evans ("Evans") appeals his convictions for involuntary manslaughter, discharge of firearm on or near prohibited premises, and having weapons while under disability. After reviewing the facts of the case and pertinent

law, we affirm Evans's convictions and prison sentence in part, vacate his convictions and prison sentence in part, and remand this case to the trial court for further proceedings consistent with this opinion.

I. Facts and Procedural History

{¶ 2} On July 30, 2020, and into the early morning hours of July 31, 2020, approximately 200 people attended a vigil on Crestwood Avenue in Cleveland. The gathering took place mainly on the street, which was lined with parked cars on both sides. The police were monitoring the scene through live videos posted on social media, which showed that many people in the crowd were carrying firearms.

{¶ 3} A.T. attended the vigil, and just before 1:00 a.m. on July 31, 2020, she got into an argument with two females. Before the situation escalated, A.T. got in her SUV and began driving on Crestwood Avenue through the crowd to go home. A.T.'s vehicle came into contact with Evans, who fired two bullets into the hood of the SUV in an attempt to stop A.T. from driving further. Approximately eight seconds later, several people opened fire on A.T.'s vehicle, hitting the driver's side, passenger's side, and rear of the SUV. Arnell Johnson ("Johnson") was identified as the person who shot several bullets into the driver's side front door of A.T.'s SUV. No shooters other than Evans and Johnson were identified. A.T. was taken to the hospital, and, despite being shot several times, she survived. However, A.T. was 24-weeks pregnant at the time, and her fetus did not survive.

{¶ 4} On September 8, 2020, Evans and Johnson were indicted for two counts of aggravated murder, murder, two counts of felonious assault, attempted

murder, discharge of a firearm on or near prohibited premises, and having weapons while under disability.

{¶ 5} Evans's and Johnson's cases were tried separately. Johnson was found guilty of aggravated murder and other associated offenses, and the court sentenced him to life in prison. This court affirmed Johnson's convictions but remanded the case for resentencing in light of issues not related to Evans's appeal. *State v. Johnson*, 8th Dist. Cuyahoga No. 111473, 2022-Ohio-4641.

{¶ 6} Evans's case was tried to the bench, and on October 21, 2021, the court found Evans guilty of involuntary manslaughter with firearm specifications, as a lesser included offense of aggravated murder; discharge of firearm on or near prohibited premises; and having weapons while under disability. The court sentenced Evans to an aggregate term of six to seven-and-a-half years in prison. Evans now appeals raising three assignments of error for our review:

> I. The trial court erred by denying appellant's motion for acquittal pursuant to Crim.R. 29 when the state failed to submit sufficient evidence for the essential elements of the crimes charged denying the appellant due process.
>
> II. Appellant's convictions are against the manifest weight of the evidence.
>
> III. The trial court failed to properly consider Mr. Evans' claim of self-defense denying him due process and the right to a fair trial.

II. Trial Testimony

A. A.T.

{¶ 7} A.T. testified that she owned a Mercury Mariner. A.T. and her friend Shamyri Nichouls ("Nichouls") would attend events to sell T-shirts that Nichouls

made. A.T. knew Johnson from social media and mutual friends. She did not know Evans, other than from social media.

{¶ 8} On July 30, 2020, Nichouls contacted A.T. around 2:00 p.m. to see if A.T. wanted to help Nichouls "make some money" at a vigil "for two males that had passed away in the prior years." The vigil took place on E. 110th and Crestwood Avenue in Cleveland. That evening, A.T. and Nichouls gathered necklaces, bracelets, and shirts that Nichouls made, loaded them into A.T.'s car, and headed for the vigil. They arrived at the event "close to 7:30." According to A.T., there were "a lot of people and there were some police officers down there because when I arrived they were taking weapons from individuals down there. * * * Everybody was kind of drunk and in their own sections. There were kind of different groups of people basically, and it was a lot of music and a lot of noise." A.T. testified that the road was barricaded because there were "too many people" there. A.T. parked on Crestwood headed away from E. 110th Street. A.T. estimated that there were "about 200 people" at the vigil.

{¶ 9} After selling the majority of Nichouls's products, sometime around 11:00 p.m., A.T. decided to leave the vigil. A.T. asked Nichouls's girlfriend, Poppie, if Poppie could take Nichouls home. Poppie "kind of got infuriated" and called A.T. a "drop-off hoe." Another woman walked up to A.T. and pointed at her. Asked what happened next, A.T. testified as follows: "I turned around. As I was pregnant, I wasn't about to get into no conflict with anybody and my family members were

there. A few of my family members just happened to be there, and I let them know someone was trying to fight me, and they told me to go home."

{¶ 10} When A.T. got into her SUV, there were "a lot of people everywhere." A.T. turned her car around to face E. 110th Street because that was the direction she needed to go to get home. "I wasn't really able to move anywhere as the streets were crowded with people, so I was just honking my horn at people to get out of the way. * * * I wasn't going no faster than about two miles [per hour]. Not even."

{¶ 11} As she was driving through the crowd, A.T. saw somebody hit her "brother in the head across his forehead with [a] weapon * * *." A.T.'s brother was standing to the passenger's side of A.T.'s vehicle when he was pistol-whipped. At first, A.T. testified that she was "standing there" when she saw this. A.T. corrected herself and said that she was "sitting there," meaning in her car, when she saw this.

> [A]t that time that's when * * * Evans ran across my car, and began to shoot me. * * * He came from the left-hand side, so my driver's side and he came right to the front of my car. Put his hand there and just began shooting. * * * He was just shooting straight up. * * * Like I had a truck, so he was just shooting straight at my hood and then he ran off. I'm not sure where.

{¶ 12} A.T. testified that Evans had his gun out and "was running from across the street with it" when he "reached" the front of her truck. According to A.T., Evans did not end up on the hood of her vehicle. Rather, "[h]e kind of stopped himself with [her] car." A.T. testified that she was "certain" that Evans ran out in front of her car, and she did not "believe" that she struck Evans with her vehicle.

{¶ 13} A.T. testified that she did not know how many times Evans shot into the hood of her truck. After Evans fired his gun from the front of A.T.'s truck, she "felt [her] driver window break and bullets started coming from the left-hand side as well." A.T.'s testimony continued as follows: "At that time, when I looked to the left of me there was a person standing in the driveway of one of the houses shooting at my vehicle." Asked who this person was, A.T. answered, "That was Arnell Johnson." According to A.T., Johnson's shots came "probably like eight seconds" after Evans's shots. A.T. testified that "some shots were being fired for a little bit of time and when they stopped I just laid back in my vehicle because I couldn't move." According to A.T., "multiple shots" were fired, although she did not know how many.

{¶ 14} A.T. testified that her car was disabled by the shots Evans fired. A.T.'s brother ran to her truck and pulled her out of the driver's side door. A.T.'s brother then put A.T. in another car and got her to the hospital. The next thing A.T. remembered was waking up in the hospital three days later. At this time, doctors informed her that her fetus did not survive.

{¶ 15} On cross-examination, A.T. testified that she had never seen Evans before "he got to the front of my vehicle." According to A.T., she was "using her car to push through the traffic. * * * I was blowing my horn, asking people to get out of the way * * *." There were cars parked on both sides of the street. "Asked if there was no actual barricade," A.T. answered, "Right." A.T. testified that "[t]here was cars and people."

{¶ 16} Later on cross-examination, A.T. testified that, at the time her brother was pistol-whipped, no shots had been fired. Evans "ran from my driver's side, so my left-hand side coming across." Asked if she hit Evans with her car, A.T. testified inconsistently with her previous statement: "I probably did. I mean, I was driving and he ran in front of my vehicle, but I didn't intentionally hit him." According to A.T., Evans's "hip and his hand is what — is where he stopped — is what made him stop. His hand." A.T. testified that Evans "was standing in front of my vehicle when it's going. What do you expect?" A.T. testified that she told the detective the following: "I was using my car to move people, to push people out of the way * * *. I was honking my horn getting people out of my way."

{¶ 17} A.T. testified that when she hit Evans with her truck, albeit at a "crawling" speed, a gun "was already in his hand and then once he stopped himself he just got to shooting. * * * He's pointing it at my car. I'm not sure exactly where it's going, but he's pointing it at my car." A.T. acknowledged that Evans was shooting his gun in a downward direction into the hood of her vehicle.

{¶ 18} No shots were fired into the front windshield of A.T.'s car. A.T. testified that "probably 10 seconds" passed between Evans firing into the hood of her car from the front and Johnson firing at her from the driver's side of her car.

B. Destiny King

{¶ 19} Destiny King ("King") testified that she was at the vigil on Crestwood Avenue on July 30, 2020, and into the early morning hours of July 31, 2020. King is A.T.'s friend. King was standing on the side of A.T.'s car when A.T. was driving

"[l]ike five miles per hour" on Crestwood. According to King, A.T. "wasn't going fast at all. She barely was — it was too many people in the street for her to just speed off." Asked what happened next, King answered, "I don't know. All I remember is they was shooting and I know — I don't know who it was, but after they start shooting, we took her to the hospital and that was it." King testified that "[i]t was like four people shooting. Ran up and started shooting. * * * They was behind the car, on the side of the car." King testified that she did not see who shot A.T. King further testified that she does not know Evans, and she does not know Johnson.

{¶ 20} On the night of the incident, King told police that she did not see who was shooting. However, after King spoke with the detectives, she "circled" Evans's and Johnson's pictures from photo lineups. Asked why she circled them, King answered, "I don't remember." King also testified that she did not see "any sort of fights that happened before the shooting." King specifically testified that she did not see A.T.'s brother get pistol-whipped. However, she also testified that he did not run after he was hit with a gun.

C. Dr. Andrew Loudon

{¶ 21} Dr. Andrew Loudon ("Dr. Loudon") testified that he reviewed A.T.'s medical records from July 31, 2021. He ascertained that A.T. was shot multiple times, resulting in eight gunshot wounds. A.T. was five to six months pregnant at the time. Exploratory surgery indicated "[g]unshot wounds to the uterus." According to Dr. Loudon, "the OBGYN teams performed an emergency C-section. Blood was noted in the amniotic sac. In addition, the fetus was delivered by C-

section nonviable and documents a gunshot wound to the, I believe, right femur of the fetus causing a descriptive injury of a near total transection of the leg." Asked if "the baby was delivered at that time and delivered nonviable, so not alive," Dr. Loudon answered, "Correct." Asked if that meant "the baby wasn't alive or does it mean the baby was not going to survive? Is there a difference?" Dr. Loudon replied as follows: "At five to six months gestation, the fetus would have a very difficult chance surviving, but in this case it was felt the bullet was — the bullet struck the fetus and that it was not viable because of the bullet injury." To Dr. Loudon's knowledge, no bullets were recovered during A.T.'s surgery. A.T. was under Dr. Loudon's care from post-op to when she was released from the ICU on August 3, 2021.

D. Detective Mark Peoples

{¶ 22} Cleveland Police Crime Scene Unit Detective Mark Peoples ("Det. Peoples") testified that he was dispatched to a crime scene on Crestwood Avenue on July 31, 2020. According to Det. Peoples, when he arrived at the scene, "[t]here were a lot of spent cartridge casings, broken glass in the street." Det. Peoples recovered over 20 spent cartridge casings and several bullet fragments in the street, sidewalk, and driveways at the scene. Pertinent to this appeal, the recovered evidence included two spent Winchester 10 mm auto-cartridge casings located in the street in front of 10804 Crestwood Avenue and two spent USA 10 mm auto-cartridge casings located in the street in front of 10801 Crestwood Avenue. The remaining recovered cartridge-casings were all 9 mm or .40-caliber.

E. Sergeant Al Johnson

{¶ 23} Cleveland Police Gang Impact Unit Sergeant Al Johnson ("Sgt. Johnson") testified about his involvement in investigating the incident that occurred on the night of July 30, 2020, and into the early morning hours of July 31, 2020, on Crestwood Avenue. Sgt. Johnson testified as follows:

> We have detectives that were investigating. They saw a group of males with a lot of firearms and we were able to identify it was going to be Crestwood Avenue in the 4th District in the City of Cleveland. We also saw that it was a lot of alcoholic beverages in these social posts along with these firearms, and it appeared people were engaging in recreation drug use.

According to Sgt. Johnson, live videos of the scene were being posted on Instagram, and the police were monitoring the situation. Sgt. Johnson and his team arrived at the vigil on Crestwood around 8:00 p.m.

{¶ 24} Sgt. Johnson testified that the police could not travel with their vehicles more than five houses down the street because the crowd was so large. People were running everywhere when they saw the police arrive, and the scene was out of control. The police recovered several firearms from people who attended the vigil. Sgt. Johnson testified that approximately 200-250 people were at the scene. The police left around 8:30 p.m. and went back to the scene a second time "a little bit after midnight" after the shooting.

F. Detective Tommy Manson

{¶ 25} Cleveland Police Crime Scene Unit Detective Tommy Manson ("Det. Manson") testified that he examined a Mercury Mariner on October 13, 2021. Det. Manson's examination included the use of trajectory rods inserted into bullet defects

in the vehicle. Det. Manson testified that he was "not making any assumptions about the directions [in] which the bullet traveled."

{¶ 26} Det. Manson testified about two bullet defects in the front of the hood of the vehicle near the grille. The two trajectory rods he placed into the hood of the vehicle associated with these two bullet defects show correlating bullet defects under the hood on the radiator and on the engine. Det. Manson testified about several photographs showing the two trajectory rods pointing down[1] into the hood of the vehicle.

{¶ 27} Det. Manson further testified that there were several other bullet defects on the driver's side, passenger's side, and rear of the vehicle.

G. James Kooser

{¶ 28} James Kooser ("Kooser") testified that he is a firearms and tool marks examiner at the Cuyahoga County Regional Forensic Science Laboratory. Kooser examined the firearms evidence recovered in the case at hand and issued a report on November 10, 2020. The evidence Kooser examined included 21 spent cartridge casings, seven bullet fragments, and one 10 mm auto-caliber Glock pistol. According to Kooser, the four recovered 10-mm cartridge-casings were fired from the 10 mm caliber Glock pistol that he tested. Kooser further testified that the bullet fragments that were recovered in this case were "insufficient for identification or elimination as to having been fired from the submitted Glock 10-millimeter auto caliber pistol *

[1] Det. Manson's testimony described these two trajectory rods as "pointing in an upward angle." Evans's counsel later stated that "the officer who testified * * * had written the report upside down from how we were looking at" the pictures.

* *." Kooser clarified on cross-examination that the only thing he could "connect with any certainty to the [10-millimeter] gun that was recovered" were the four spent cartridge casings recovered from the street.

H. Dr. Elizabeth Mooney

{¶ 29} Dr. Elizabeth Mooney ("Dr. Mooney") testified that she is a forensic pathologist at the Cuyahoga County Medical Examiner's Office. Dr. Mooney testified that, on August 1, 2020, she performed an autopsy on A.T.'s fetus. The fetus weighed "1.2 pounds and measured just under a foot," which is consistent with the reported gestational age of 24 weeks. Asked if the fetus was "a viable, healthy fetus," Dr. Mooney answered, "Yes." Asked to explain, Dr. Mooney testified that "viable" meant that the fetus "was alive at the time in the sense of viability at the time it received these injuries." Dr. Mooney offered no testimony about the viability of the fetus outside of the womb.

{¶ 30} Dr. Mooney testified that there was "injury from gunshot wound to the terminal end of the umbilical cord. * * * The terminal end attached to the fetus is severed." Dr. Mooney further testified that the fetus sustained multiple wounds, bruising, and lacerations due to the "trauma of the gunshot."

{¶ 31} Dr. Mooney testified that a bullet fragment from the placenta and a "small what appeared to be the jacket fragment attached to [a] spicule bone * * * that had come to rest on the fetus's left arm" were recovered. Dr. Mooney explained that "[a]lthough there was no internal damage to what we call vital organs inside the fetus itself, the umbilical cord is and the placenta is the lifeline for the fetus. So

considering the injuries to the umbilical cord, and especially transection of the umbilical cord, that's not sustainable to life for the fetus." According to Dr. Mooney, the "ultimate reason why this fetus died was due to the gunshot wounds."

I. Detective Brandon Melbar

{¶ 32} Detective Brandon Melbar ("Det. Melbar") testified that he works in the Major Crimes Detective Unit of the Cleveland Division of Police. At approximately 2:30 a.m. on July 31, 2020, Det. Melbar responded to a "multiple shots fired" call at 13901 Benwood Avenue. According to Det. Melbar, Johnson was living in this house at the time, and Johnson was a "person of interest" in the "homicide on Crestwood." Asked if he was "aware of just a generic association between" Johnson and Evans, Det. Melbar answered, "Yes. * * * I know that they spent a lot of time in the Morris Black housing projects together."

J. Detective Christina Cottom

{¶ 33} Detective Christina Cottom ("Det. Cottom") testified that she is a detective in the Homicide Unit of the Cleveland Division of Police. Det. Cottom responded to University Hospitals on July 31, 2020, regarding a "felonious assault shooting," in which the victim "had been pregnant and lost her child." When Det. Cottom arrived at the hospital, A.T. was sedated. Det. Cottom spoke with A.T.'s parents and learned the "Instagram names" of suspects, including "Nunnie_10010" and "Nellg.4evachasing." Det. Cottom ultimately learned that "Nunnie_10010" was Evans and "Nellg.4evachasing" was Johnson. Det. Cottom subsequently interviewed A.T., who identified Evans and Johnson as suspects.

{¶ 34} Det. Cottom testified that a Cleveland Metropolitan Housing Authority sergeant released a 10 mm weapon to her that was removed from a vehicle at the Morris Black apartment complex. Det. Cottom testified about a receipt for the purchase of this weapon, along with ammunition, listing Evans's mother as the buyer. Det. Cottom further testified that the weapon and magazine contained trace DNA consistent with Evans. Additionally, Evans's palm print was found on the hood of A.T.'s SUV.

{¶ 35} The state introduced into evidence a PowerPoint presentation of "authenticat[ed]" and "stipulated" Instagram communications between "nellg.4evachasin" and "nunnie_10010" dated July 30, 2020 and July 31, 2020. At trial, the state established that the Instagram account "nunnie_10010" belonged to Evans and the Instagram account "nellg.4evachasin" belonged to Johnson. The PowerPoint showed that Johnson and Evans communicated twice via messages at approximately 5:00 p.m. on July 30, 2020. The PowerPoint also showed that, between approximately 3:30 a.m. and 6:15 p.m. on July 31, 2020, hours after the shooting, Johnson and Evans communicated via video chat eight times, messages six times, and a story-share one time.

{¶ 36} The trial court ruled that the content of these communications was inadmissible as hearsay. However, asked if any of the communications between Johnson and Evans prior to the shooting "reference [A.T.], or to shooting anyone, or doing anybody any harm," Det. Cottom replied, "No."

{¶ 37} On cross-examination, Det. Cottom testified that she learned from multiple sources during her investigation that A.T. hit Evans with her vehicle at the vigil. Det. Cottom testified that when she first interviewed A.T., she asked if A.T. had been shown any pictures of people by family members. A.T. told Det. Cottom, "No." However, Det. Cottom knew this was not true because A.T.'s mother emailed a picture of Evans to Det. Cottom and told Det. Cottom that she showed this picture to A.T.

{¶ 38} Det. Cottom testified about the live Instagram videos that were posted showing the vigil on Crestwood on July 30 and July 31, 2020. According to Det. Cottom, she "was able to identify both [Johnson] and [Evans] in these videos." Det. Cottom testified that Johnson was wearing a "yellow hoodie" and holding a gun in the videos. Det. Cottom testified that Evans was dressed in white and was also holding a gun. Johnson and Evans are standing next to each other for approximately two seconds in one of the videos.

K. Antoine Patterson

{¶ 39} Antoine Patterson ("Patterson") testified on behalf of Evans that he grew up with Evans and another male, Tywain Johnson, who was killed in 2015, when he was 15 years old. Tywain was Johnson's younger cousin, and Patterson knew who Johnson was. Patterson did not know A.T. On the night of July 30, 2020, he attended the vigil on Crestwood with Evans and Evans's brother "Little Van." According to Patterson, there were a lot of people there and there "was so much going on."

{¶ 40} At one point, as Patterson and Evans were standing in the street, a "car was coming, * * * and once I seen the car come I moved out the way, and [Evans] didn't have enough time to move out the way." Asked why he moved out of the way, Patterson answered, "Because she was driving reckless and I didn't want to get hit. It seemed like the car was coming to hit people. Get out the way. Get out the street." According to Patterson, Evans "didn't * * * get * * * out of the way because the car hit him." Patterson testified that Evans "was on top of the hood and it was like the car was trying to drive with him on the hood, and I seen [Evans] fire two shots down into the car, and after that I took off because I heard shots. Like 10 seconds after that I took off."

{¶ 41} Patterson further explained what occurred: "I heard [Evans] fire two shots on the hood to stop her from driving away [with Evans] on the car. I took off. As I was taking off I heard a whole bunch of shots taking off, but * * * I seen [Evans] already running the opposite way towards 110th when I was running." According to Patterson, Evans "didn't have his gun out until after he got hit by the car, and the car was driving with him on the car, and he took it out to stop the car." Patterson explained that he heard only two gunshots before Evans "took off running." Patterson also testified that he did not see who was driving the car that hit Evans.

L. Evans

{¶ 42} Evans testified on his own behalf that he did not know A.T. or A.T.'s brother prior to the night in question. He attended the vigil on Crestwood with his younger brother and Patterson. Evans was not aware of any "drama" that was going

on at the vigil. There was a music video being filmed that day, and Evans pulled his gun out for the video. After the video shoot was over, Evans put his gun "on [his] person," and did not take it back out until A.T. hit him with her SUV.

{¶ 43} Evans testified that he was standing in the street with "a whole bunch of people." Evans estimated that "probably about 150, 200" people attended the vigil. According to Evans, other cars that were "driven real slowly" had been allowed to pass through the crowd on the street that night. However, A.T.'s car

> just came through like it didn't care. * * * When this car came, nobody — people was just running. [A.T.] didn't let nobody know. They was just running out the way because I guess she was coming through without acknowledging. She was just driving through fast. * * * [O]ther people came through slow and like acknowledging people was in the street. She just came without no care.

{¶ 44} Asked why he could not get out of the way before A.T.'s car hit him, Evans testified as follows: "I was trying, but you know if a whole bunch of people trying to run at once, you might trip and fall over [the] next person. I wasn't trying to run because then everybody fall. We all might have just got ran over. So I was trying to move slowly, but not so slow I would get hit. I was trying to get out of the way and prevent other people from getting hit also." At this time, Evans's gun was in his waistband. According to Evans, A.T. hit him with her car. Specifically, Evans testified as follows: "Like I fell onto the hood of the car, but when I fell on the hood of the car I was holding onto it with my hand and when I — I thought she was going to stop because she sees like she hit somebody, but she kept going." Evans testified that he fell forward, the side of his body ended up on the hood of A.T.'s car, and his

feet were "in the air hanging off. I thought she was going to stop because she realized she hit somebody with her car." According to Evans, A.T. did not stop driving at this point. Evans testified about what happened next: "I pulled out my gun and I got to shooting into the hood, so the car could stop and I would be able to get off and get out the way." Asked why he fired his gun, Evans answered, "Because I felt like if I would have let her keep going, I would have fell off, and got ran over, and possibly killed or seriously hurt."

{¶ 45} Evans testified that, when he was on the hood of A.T.'s car, he fired his gun twice. Asked about the other two cartridge casings that were fired from his gun and found on the street, Evans testified as follows: "[M]y finger was still on [the] trigger as I was falling off the car, so the gun could have went off, and shot into the ground * * *." Evans testified that after he shot into the engine, "[t]he car like jerked and I slid off." According to Evans, he did not shoot into the windshield of A.T.'s car. Evans fell to his knees and "heard a whole bunch of gunshots, and when I heard the gunshots I ran because I didn't know if I was getting shot at or if somebody was shooting at each other. I didn't know where they was coming from. I just heard a whole bunch of gunshots."

{¶ 46} Asked if, as he was running away from the car, he thought he shot A.T., Evans answered as follows: "No. I knew I didn't because the way I shot * * * [d]own into the hood." Evans testified that he later learned A.T. had been shot, but had no idea who shot her. Evans did not see Johnson shoot A.T. According to Evans, "[p]eople [on social media] were saying that I shot her. * * * [T]hey were saying that

me and [Johnson] were the shooters." Evans testified that Johnson called him when Johnson's house was "shot up" in the middle of the night after the shooting at the vigil.

{¶ 47} On cross-examination, Evans testified that he knew Johnson "from my best friend that passed away as being his big cousin." According to Evans, he and Johnson did not "hang out. * * * We would see each other. Talk for a little bit and then that would be that." Asked if he was "hanging out" with Johnson at the vigil, Evans testified as follows: "We wasn't hanging out. I just seen him. He text me and I let him know that the block party was on Crestwood because we usually have it on Crestwood or Woodstock in the big field, and he texted me, and ask me — let me know where like I at, and I said, 'The block party.' We at Crestwood on the block party." Evans and Johnson spoke at the vigil earlier in the day. Evans testified that he did not see A.T.'s brother get pistol-whipped at the vigil. Evans did not know where Johnson was when gunfire broke out.

III. Law and Analysis

A. Sufficiency of the Evidence

{¶ 48} In Evans's first assignment of error, he challenges his convictions of involuntary manslaughter and discharging a firearm on or near a prohibited premises as being supported by insufficient evidence. Evans does not challenge his having weapons while under disability conviction.

{¶ 49} "[A]n 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 defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

B. Involuntary Manslaughter and Having Weapons While Under Disability

{¶ 50} Pursuant to R.C. 2903.04(A), "[n]o person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony." In the case at hand, the trial court announced from the bench that it found the predicate offense underlying Evans's involuntary manslaughter conviction was having weapons while under disability. Pursuant to R.C. 2923.13(A), "no person [under disability] shall knowingly acquire, have, carry, or use any firearm * * *." Evans stipulated at trial that he had a prior juvenile adjudication, which rendered him "under disability."

1. Proximate Cause in Criminal Law

{¶ 51} Evans's argument on appeal takes issue with the proximate cause element of involuntary manslaughter.

{¶ 52} "[I]t is well established that Ohio law generally defines 'cause' in criminal cases identically to the definition of 'proximate cause' in civil cases." *State v. Carpenter*, 2019-Ohio-58, 128 N.E.3d 857, ¶ 51 (3d Dist.), quoting *State v. Jacobs*, 8th Dist. Cuyahoga No. 51693, 1987 Ohio App. LEXIS 6828, 2 (Apr. 23, 1987) ("It is merely a matter of semantics that criminal cases are 'cause' and 'result' and civil

cases use 'proximate cause' and 'proximate result.' They mean the same thing. In fact, R.C. 2903.04 (Involuntary Manslaughter) uses [the term] 'proximate result' * * *.").

{¶ 53} To show proximate cause, a criminal defendant's conduct must be both (1) "the actual cause" and (2) "the legal cause" of the specified result. *Burrage v. United States*, 571 U.S. 204, 210, 134 S.Ct. 881, 1187 L.Ed. 2d 715 (2014). *See also State v. Hall*, 12th Dist. Preble No. CA2015-11-022, 2017-Ohio-879, ¶ 71 ("The term 'proximate result' in the involuntary manslaughter statute involves two concepts: causation and foreseeability.").

{¶ 54} "Actual cause" is generally shown through the "but-for" test. *State v. Womack*, 7th Dist. Mahoning No. 19 MA 0068, 2020-Ohio-5018, ¶ 20. In *State v. Williams*, 7th Dist. Columbiana No. 19 CO 0010, 2020-Ohio-4430, ¶ 28, the court noted that in a "but-for" causation case, "the state was required to prove that the decedent would not have died but for the defendant's conduct."

{¶ 55} "Legal cause," on the other hand, is generally shown through the "foreseeability" test. *Womack* at ¶ 20. Ohio courts have explained foreseeability in the context of criminal law as follows:

> [A] [d]efendant can be held criminally responsible for the killing regardless of the * * * identity of the person whose act directly caused the death, so long as the death is the "proximate result" of [the] [d]efendant's conduct in committing the underlying felony offense; that is, a direct, natural, reasonably foreseeable consequence, as opposed to an extraordinary or surprising consequence, when viewed in the light of ordinary experience.

State v. Dixon, 2d Dist. Montgomery No. 18582, 2002 Ohio App. LEXIS 472, 14 (Feb. 8, 2002). *See also State v. Jennings*, 2017-Ohio-8224, 100 N.E.3d 93, ¶ 22 (8th Dist.) (citing *Dixon* with approval).

{¶ 56} Courts across Ohio, including the Ohio Supreme Court, have considered what facts and circumstances are sufficient to establish "causation" in support of an involuntary manslaughter conviction. In *State v. Crawford,* 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, ¶ 14-16 (citations omitted), the Ohio Supreme Court recently reviewed involuntary manslaughter with a predicate offense of having weapons while under disability.

> The statute requires two things for an involuntary-manslaughter conviction: (1) that a felony was committed and (2) that a person's death was a proximate result of the commission of that felony. * * *
>
> The foreseeable harm is what matters for proximate cause. * * * We are to ask the "basic question that a proximate cause requirement presents": Does "'the harm alleged [have] a sufficiently close connection to the conduct' at issue"? * * * Thus, if an offender uses a firearm in violation of the weapons-while-under disability statute and the offender's use of that firearm proximately results in the death of another, the elements of involuntary manslaughter are satisfied.

{¶ 57} This court's decision in *State v. Crawford*, 8th Dist. Cuyahoga No. 108431, 2020-Ohio-2939, affords additional details regarding evidence sufficient to establish causation. This court affirmed the defendant's involuntary manslaughter conviction with having weapons while under disability as the predicate offense. The facts underlying Crawford's conviction follow. Crawford and his friend showed up at a house party sometime around 3:00 a.m. *Id.* at ¶ 4. Crawford's ex-girlfriend was at this party, and a disagreement between Crawford

and one of the partygoers ensued. *Id.* A few people went outside to deescalate the situation, and Crawford and his friend followed them. Crawford "pulled out a gun and started shooting it in the air." *Id.* at ¶ 5. According to some of the witnesses who testified at trial, Crawford's friend also fired shots. *Id.* at ¶ 13. Crawford and his friend fled the scene in Crawford's car, and one witness testified that she heard additional gunshots fired from Crawford's car as he was speeding away. *Id.* at ¶ 7. The victim ultimately died as a result of gunshot wounds sustained during this incident.

{¶ 58} In affirming Crawford's involuntary manslaughter conviction based on these facts, this court held the following:

> We acknowledge that the testimony and other evidence in this case do not make it definitively clear who shot and killed [the victim], as evidenced by the not guilty verdict on the murder charge. There was, however, evidence in the record that Crawford acquired, had, carried, and used a firearm. Further, there was evidence in the record that he instigated a disagreement, threatened physical violence, escalated this disagreement, brandished a firearm, and shot a firearm. Viewing this evidence in the light most favorable to the state, we find that there was sufficient evidence that [the victim's] death was the proximate result of Crawford having a weapon while under disability.

{¶ 59} Another example of evidence sufficient to establish the causation element is found in *State v. Brisco*, 10th Dist. Franklin No. 16AP-759, 2017-Ohio-8089, where the court affirmed an involuntary manslaughter conviction with a predicate offense of having weapons while under disability. In *Brisco*, the defendant and his wife got into an argument and "the two fought over control of the [defendant's] gun and it went off. [The wife] was struck in the head and later died

from the wound." *Id.* at ¶ 8. The court found as follows in determining that the defendant's commission of the having weapons while under disability offense was a proximate cause of his wife's death: "But for [the defendant's] having a gun, the death would not have occurred. It is hard to dispute that [the defendant's] having a gun and the gun being present when he and [his wife] were disagreeing was a cause of her death. If the gun had not been there, [his wife] would still be alive." *Id.* at ¶ 25.

{¶ 60} In *State v. Sabatine*, 64 Ohio App.3d 556, 582 N.E.2d 34 (8th Dist.1989), this court affirmed an involuntary manslaughter conviction with a predicate offense of illegal possession of a firearm in a liquor permit premises. In *Sabatine*, the "[d]efendant discharged the weapon from within the ladies' room and caused the bullet to travel through the ladies' room door into a crowded bar area and strike the victim in the forehead." *Id.* at 559. In affirming the defendant's conviction for involuntary manslaughter, this court found as follows:

> In the case sub judice, proximate result means that death could reasonable be anticipated by an ordinarily prudent person when the defendant brings a loaded firearm into a liquor permit premises and then points and discharges the weapon from inside the ladies' room while pointing the firearm at the door, behind which is a bar full of people. * * * Defendant's reckless handling of the .38 caliber handgun was * * * the proximate result of the victim's death.

Id. at 560.

2. Evidence of Proximate Cause in the Case at Hand

{¶ 61} We note that it is undisputed that Evans fired his gun into the hood of A.T.'s vehicle; a barrage of bullets from multiple shooters was subsequently fired

into A.T.'s vehicle; and A.T.'s fetus died as a result of gunshot wounds sustained from some of these bullets. There is no evidence in the record, nor was there argument during trial or on appeal, that Evans shot A.T. or her fetus.

{¶ 62} The state presented two theories that Evans proximately caused the death of A.T.'s fetus.

i. State's First Theory Regarding Proximate Cause

{¶ 63} First, the state argued that Evans's "initial shots * * * likely triggered Co-Defendant Johnson and others to join in the shooting at [A.T.]." A.T. testified that Evans ran in front of her car and fired his gun into the hood. According to A.T., approximately eight seconds later, Johnson and other unknown individuals shot multiple times into her car. While the evidence is consistent that Evans fired the first shots, the state presented no evidence that "but for" Evans's shots, subsequent shots would not have been fired. Furthermore, the state did not show that a direct, natural, or reasonably foreseeable consequence of firing a gun into the hood of a car is that other people would then begin shooting into this same car and killing an unborn child.

{¶ 64} Upon review, we find that the case at hand can be factually distinguished from *Crawford*, *Brisco* and *Sabatine*. In *Crawford*, it was disputed whether Crawford or his friend killed the victim, but evidence in the record showed that Crawford "instigated a disagreement, threatened physical violence, escalated this disagreement, brandished a firearm, and shot a firearm." *Crawford*, 8th Dist. Cuyahoga No. 108431, 2020-Ohio-2939, at ¶ 40. In *Brisco*, 10th Dist. Franklin

No. 16AP-759, 2017-Ohio-8089, a bullet from the defendant's gun killed the victim when the defendant and the victim were arguing and struggling over the firearm. In *Sabatine*, 64 Ohio App.3d 556, 582 N.E.2d 34, a bullet from the defendant's gun killed the victim when the defendant recklessly fired the gun into a closed bathroom door, "behind which [was] a bar full of people." *Sabatine* at 560. These facts are markedly different than the facts in the case at hand.

{¶ 65} Here there is no evidence that a bullet from Evans's gun killed A.T.'s fetus; there is no evidence that but for Evans's shots into the hood of A.T.'s car her fetus would not have died; and there is no evidence that the tragic events on that night were the reasonably foreseeable consequence of Evans's actions.

ii. State's Second Theory Regarding Proximate Cause

{¶ 66} The second theory that the state presented under the umbrella of proximate cause is that Evans was complicit with Johnson in causing the death of A.T.'s fetus. Specifically, the state argues on appeal that Evans "knew Johnson prior to the incident, participated in filming a music video with him that same day, and further communicated with him before and after the shooting."

{¶ 67} Pursuant to R.C. 2923.03, complicity is defined as follows:

> (A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:
>
> (1) Solicit or procure another to commit the offense;
>
> (2) Aid or abet another in committing the offense;
>
> (3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code;

(4) Cause an innocent or irresponsible person to commit the offense.

{¶ 68} Although the state does not identify which subsection of R.C. 2923.03 its complicity theory falls under, the arguments as expressed align with aiding and abetting under R.C. 2923.03(A)(2). "Aiding and abetting contains two basic elements: an act on the part of the defendant contributing to the execution of a crime and the intent to aid in its commission." *State v. Peavy*, 8th Dist. Cuyahoga No. 80480, 2002-Ohio-5067, ¶ 32.

{¶ 69} In *State v. Johnson*, 93 Ohio St.3d 240, 245, 754 N.E.2d 796 (2001), the Ohio Supreme Court 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.

Furthermore, Ohio courts consistently hold that "the defendant's mere association with the principal offender is not enough to prove complicity. * * * The defendant must have had some level of active participation by way of providing assistance or encouragement." *State v. Robinson*, 8th Dist. Cuyahoga No. 99290, 2013-Ohio-4375, ¶ 64. *See also State v. Hall*, 8th Dist. Cuyahoga No. 102789, 2016-Ohio-698, ¶ 9 ("Although an aider or abettor's shared criminal intent may be inferred from the circumstances surrounding the crime, mere association with the principal offenders or presence at the scene of the crime alone is insufficient to establish complicity.").

{¶ 70} Det. Brandon Melbar testified that he was "aware of just a generic association between" Johnson and Evans, explaining that the two "spent a lot of time

in the Morris Black housing projects together. * * * I have seen them there together many times." A.T. testified that Evans ran in front of her SUV from the driver's side of the vehicle. Johnson was standing to the driver's side of A.T.'s vehicle when he fired shots.

{¶ 71} The Instagram videos that were played during trial show a large crowd of people were gathered on Crestwood for the vigil. No timeframe was given for the videos other than some of the footage was during daylight hours and some of the footage appeared to be taken at night. More people than this court can count are holding firearms, ammunition, alcohol, and cash. The videos provide context for the situation that day on Crestwood and show, for approximately two seconds, that Johnson and Evans were present and standing near each other. Upon review, we find that the videos did not present any additional evidence to establish proximate cause.

{¶ 72} Patterson testified that Evans knew Johnson because Evans was friends with Johnson's younger cousin, who was killed in 2015. Evans corroborated this testimony, stating that he and Johnson did not "hang out," but that when they saw each other they would "talk for a little bit." Evans testified that he saw Johnson at the vigil, but they were not "hanging out." Evans further testified that after he fell off of the hood of A.T.'s SUV and heard gunshots, he ran away. He later learned that A.T. had been shot and testified that he had no idea who shot her.

{¶ 73} Our review of the Instagram communications shows that Evans and Johnson messaged twice approximately eight hours prior to the shooting.

Additionally, they communicated several times within 24 hours after the shooting. We reiterate that the content of the communications was ruled inadmissible at trial. However, Det. Cottom testified that the Instagram communications between Johnson and Evans did not reference A.T., shooting anyone, or "doing anybody any harm."

{¶ 74} Upon review, we find that the state failed to present any evidence that Evans "supported, assisted, encouraged, cooperated with, advised, or incited" Johnson concerning the death of A.T.'s fetus or that Evans shared Johnson's purposeful state of mind when Johnson killed A.T.'s fetus. The evidence that the state presented to show a connection between Evans and Johnson did nothing more than establish that the two were acquaintances who had minimal communication about benign topics on the day they separately attended a neighborhood event with approximately 200 other people.

{¶ 75} Accordingly, we find that there is insufficient evidence in the record to support Evans's involuntary manslaughter conviction.

C. Discharge of a Firearm on or Near Prohibited Premises

{¶ 76} Evans also challenges the sufficiency of the evidence regarding the court's finding that his conviction for discharge of a firearm on or near prohibited premises is a first-degree felony rather than a first-degree misdemeanor.

{¶ 77} Pursuant to R.C. 2923.162(A)(3), "[n]o person shall * * * [d]ischarge a firearm upon or over a public roadway." Generally, a violation of R.C. 2923.162(A)(3) is a first-degree misdemeanor. R.C. 2923.162(C)(1). However,

"[i]f the violation caused serious physical harm to any person, a violation of division (A)(3) * * * is a" first-degree felony. R.C. 2923.162(C)(4).

{¶ 78} In the case at hand, the court found that Evans's conviction of discharging a firearm on a public roadway was a first-degree felony. This necessarily required a finding that the violation caused serious physical harm to a person.

{¶ 79} Upon review, we find insufficient evidence in the record to show that Evans's firing his gun caused physical harm — serious or otherwise — to another person. The evidence showed that Evans fired his gun twice into the hood of A.T.'s vehicle. The evidence also showed that four cartridge casings that were fired from Evans's gun were found in the street at the crime scene. There simply is no evidence in the record that Evans's discharging his gun harmed any person.

IV. Conclusion

{¶ 80} Accordingly, Evans's first assignment of error is sustained. His conviction for discharge of a firearm on or near prohibited premises, a first-degree felony, in violation of R.C. 2923.162 is vacated. On remand, the court is instructed to enter a conviction of the same offense as a first-degree misdemeanor. Evans's conviction and sentence for involuntary manslaughter is vacated. Evans's conviction for having weapons while under disability, and the associated 24-month prison sentence is affirmed.

{¶ 81} Evans's second and third assignments of error are rendered moot by the disposition of his first assignment of error. App.R. 12(A)(1)(c).

{¶ 82} Judgment affirmed in part, vacated in part, and remanded to the trial court for proceedings consistent with this opinion.

It is ordered that appellant and appellee 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.

LISA B. FORBES, JUDGE

EMANUELLA D. GROVES, J., CONCURS;
MARY EILEEN KILBANE, P.J., DISSENTS (WITH SEPARATE OPINION)

MARY EILEEN KILBANE, J., DISSENTING:

{¶ 83} I respectfully dissent.

{¶ 84} Crim.R. 29(A) provides that a court "shall order the entry of the judgment of acquittal of one or more offenses * * * if the evidence is insufficient to sustain a conviction of such offense or offenses." "Because a Crim.R. 29 motion questions the sufficiency of the evidence, '[w]e apply the same standard of review to Crim.R. 29 motions as we use in reviewing the sufficiency of the evidence.'" *Fairview Park v. Peah*, 8th Dist. Cuyahoga No. 110128, 2021-Ohio-2685, ¶ 37, quoting *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 85} A sufficiency challenge requires a court to determine whether the state has met its burden of production at trial and to consider not the credibility of the evidence but whether, if credible, the evidence presented would sustain a conviction. *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541 (1997). 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. *Jenks*, 61 Ohio St.3d at 273, 574 N.E.2d 492 (1991), citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Evans argued in his first assignment of error that because the state failed to submit sufficient evidence for the essential elements of the crimes charged, the trial court erred when it denied his motion for acquittal pursuant to Crim.R. 29.

{¶ 86} A bench trial was conducted at which the trial court heard the evidence and found Evans not guilty of murder, felonious assault, and attempted murder but guilty of involuntary manslaughter with firearm specifications as a lesser included offense of aggravated murder, discharge of a firearm on or near prohibited premises, and having a weapon while under disability.

{¶ 87} The trial court referenced the Instagram videos shown during trial that provided context of the events occurring on Crestwood Avenue on the date in question, although not necessarily at the exact time of the shooting. Specifically, the trial court referenced the multitude of individuals possessing firearms: "the fact that they all had guns in their hands that's what I think is disconcerting." Tr. 805. The Instagram videos depicted

> some guy that's a rapper. And then behind him, and [Evans] was one of them, everybody is holding a gun. Okay. I mean, and some of the guns, like it had real long clips, like really long clips, and [Evans] had a really long clip. And then some people had guns that had really long barrels, you know what I mean, with the big kind of clips. This is in a neighborhood, you know, this is where somebody may be walking their baby down the street in a baby carriage, or a five- or six-year-old trying to ride his bike for the first time out with his mom or dad and grandma or grandpa.

Tr. 803.

{¶ 88} The evidence showed a crowded street with approximately 200 participants, many of whom were carrying firearms and consuming alcoholic beverages. Further, the police attempted to patrol the gathering, but due to the chaotic nature of the event, the police left the area: "We have a signal where we call it beach ball when everything is so out of control we got to leave out of there. We had to call beach ball and recover at a different location." Tr. 351-352. The police then monitored the scene by social media until returning after the shooting of A.T.

{¶ 89} The trial court defined proximate result as follows:

> I also looked at proximate result in the Ohio Jury Instructions. In order for criminal conduct to constitute proximate cause of a result, the conduct must have caused the result. In that "but for," the conduct of the result would not have occurred and the result must have been foreseeable. It is not necessary for the defendant to foresee or know the exact consequences of his conduct. The consequences are foreseeable if what actually transpired was actual and logical and the defendant's conduct was within the scope of the risk created by the defendant.

Tr. 281-282. The trial court determined that Evans used a firearm in violation of the weapons-while-under-disability statute and his use of that firearm proximately resulted in the death of the fetus:

> As to Count 2, aggravated murder, in violation of 2903.01(C), and as to Count 1 — okay — as to Count 2, aggravated murder, in violation of 2903.01(C), and as to Count 1, murder, under 2903.01(A), the Court finds the defendant guilty of the lesser included offense of involuntary manslaughter in violation of 2903.04. That section states that no person shall cause the death of another, or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony of having a weapon under disability in violation of 2923.13(A).
>
> That's the decision of the Court.

Tr. 785-786.

{¶ 90} The facts in this case are similar to those presented in *Crawford,* 8th Dist. Cuyahoga No. 108431, 2020-Ohio-2939, at ¶ 40. The *Crawford* Court stated:

> We acknowledge that the testimony and other evidence in this case do not make it definitively clear who shot and killed Dickens, as evidenced by the not guilty verdict on the murder charge. There was, however, evidence in the record that Crawford acquired, had, carried, and used a firearm. Further, there was evidence in the record that he instigated a disagreement, threatened physical violence, escalated this disagreement, brandished a firearm, and shot a firearm. Viewing this evidence in the light most favorable to the state, we find that there was sufficient evidence that Dickens's death was the proximate result of Crawford having a weapon while under disability.

Crawford at ¶ 40. Evans did not dispute that he carried and used a firearm. While Evans did not instigate a confrontation with A.T., as the defendant-appellant did in *Crawford*, the unique circumstances here created an atmosphere where Evans should have foreseen that discharging his firearm into the heavily armed crowd where alcohol was being consumed and emotions were high could have resulted in another member of the crowd shooting in response.

{¶ 91} There was contrary testimony as to whether Evans was struck by A.T. as she attempted to drive down Crestwood Avenue. There was testimony that Evans and Johnson — the actual shooter of A.T. — "spent a lot of time in the Morris Black housing projects together" and communicated electronically several times throughout the day in question. Tr. 502. The evidence demonstrated that Evans shot first into the hood of A.T.'s car and within seconds Johnson shot into A.T.'s vehicle. I would find that the evidence supported the findings of the trial court — an experienced trial judge well versed on the pertinent issues and applicable law — that (1) but for Evans's possession of a firearm while under disability and shooting at the hood of A.T.'s vehicle, Johnson would not have opened fire on A.T.'s vehicle and (2) it was reasonably foreseeable under the circumstances that someone in the crowd would respond with gunfire when he or she heard or observed Evans shoot A.T.'s vehicle.

{¶ 92} For these reasons, I would respectfully affirm the lower court's decision.