

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115459
JEMERIOUS DAVIS,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 8, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-694514-D

Appearances:

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

Joseph V. Pagano, *for appellant*.

ANITA LASTER MAYS, J.:

{¶ 1} Defendant-appellant Jemerious Davis (“Davis”) appeals his convictions and sentence following a jury trial in the Cuyahoga County Court of Common Pleas. Davis raises six assignments of error challenging the trial court’s jury instructions, the admission of evidence concerning statements he made before

his arrest, the admission of testimony concerning vehicles with tinted windows, the manifest weight and sufficiency of the evidence, and the imposition of consecutive sentences.

{¶ 2} After a review of the record and applicable law, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 3} On July 4, 2024, Davis, his half-brother Juwone Deaver (“Deaver”), and numerous family members and friends attended a gathering at a residence on West 125th Street in Cleveland. Among those present were Deaver’s then-girlfriend, T.C., and her ten-year-old daughter, G.G.¹

{¶ 4} During the gathering, a dark Dodge Durango with tinted windows slowly traveled past the residence. The vehicle later turned around and again traveled past the house. Several people at the gathering became concerned that the occupants of the Durango intended to engage in a drive-by shooting.

{¶ 5} The record reflects that a friend of Davis and Deaver had been injured in a shooting approximately two weeks earlier. Against that background, the Durango’s return generated concern among those gathered outside the residence.

¹*See State v. Deaver*, 2026-Ohio-2539 (8th Dist.) (affirming Deaver’s convictions arising from the same shooting).

{¶ 6} As the Durango passed the residence, Deaver directed those outside to move toward the house. A series of loud noises followed. Witnesses disputed whether all of the sounds were gunshots or whether some were fireworks.

{¶ 7} Deaver fired a .45-caliber handgun in the direction of the Durango. Davis, who had been inside the residence, testified that he saw G.G. get shot as she ran toward the house. Davis then went outside, observed Deaver firing toward the Durango, and later fired multiple rounds from a Zastava 7.62 x 39 mm pistol toward the Durango. G.G. sustained a fatal gunshot wound to the head.

{¶ 8} When police arrived, T.C. was attempting to transport G.G. to the hospital. Police placed G.G. in their vehicle and transported her to the hospital. At the hospital, Cleveland Police homicide detective Jonathan Dayton (“Det. Dayton”) questioned family members, including both Deaver and Davis. Deaver told the police that he did not know who shot at the Durango. Davis told detectives that he had left the gathering before the shooting. He did not disclose that he had fired a weapon or that he had been present when G.G. was shot. However, the next day, Deaver told another family member that he had shot at the vehicle to protect his family. That family member disclosed the information to the police.

{¶ 9} Investigators recovered 14 cartridge casings from the scene that were later determined to have been fired from Davis’s Zastava pistol. Firearms testing established that the bullet fragments recovered during G.G.’s autopsy were not fired from Davis’s weapon. The firearms examiner testified that the autopsy fragments contained a polymer tip inconsistent with the ammunition fired by Davis’s 7.62 x 39

mm firearm. Davis later testified that he was not truthful because he was distraught, was on probation, and did not want to admit that he had possessed a firearm. (Tr. 1150.)

{¶ 10} The fact that Davis did not fire the fatal projectile was not dispositive of the State's theory of liability. The State alleged that Davis and Deaver acted in complicity during the shooting and that Davis was legally accountable for offenses committed during their joint conduct. Count 1 charged Davis with felony murder predicated on felonious assault. Counts 2 through 5 charged felonious assault against each of the four occupants of the Durango. Count 6 charged improperly discharging a firearm at or into a habitation. Counts 7 and 8 charged discharging a firearm on or near prohibited premises, based respectively on the substantial risks of physical harm to persons and serious physical harm to property.

{¶ 11} Following trial, the jury found Davis guilty of murder in violation of R.C. 2903.02(B); four counts of felonious assault in violation of R.C. 2903.11(A)(2); improperly discharging a firearm at or into a habitation in violation of R.C. 2923.161(A)(1); and two counts of discharging a firearm on or near prohibited premises, in violation of R.C. 2923.162(A)(3). The counts included firearm specifications.

{¶ 12} The trial court imposed an aggregate prison sentence of 25 years to life. Counts 2 through 5 were ordered to run concurrently with each other, Counts 7 and 8 were ordered to run concurrently with each other, and Counts 1, 2, and 6 were ordered to run consecutively.

{¶ 13} Davis timely appeals and raises the following assignments of error:

I. The trial court erred by granting the State's requested jury instruction on complicity and denying appellant's request for jury instructions for inferior degree offenses and to exclude the reasonableness of force instruction.

II. The trial court erred in allowing the State to elicit testimony regarding defendant's silence as substantive evidence of guilt in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 10 and 16 of the Ohio Constitution.

III. The trial court erred by admitting irrelevant and prejudicial evidence in violation of Evid.R. 401, 402, 403 and 404.

IV. Appellant's convictions are against the manifest weight of the evidence because he acted in self-defense or are otherwise against the manifest weight of the evidence.

V. The trial court erred when it denied appellant's motion for acquittal under Crim.R. 29 because the state failed to present sufficient evidence to establish the elements necessary to support the convictions beyond a reasonable doubt.

VI. Appellant's sentence is contrary to law because the record does not support the imposition of consecutive sentences.

II. Law and Analysis

A. Jury Instructions

{¶ 14} In his first assignment of error, Davis argues that the trial court erred by instructing the jury on complicity, refusing to instruct the jury on aggravated assault and involuntary manslaughter, and instructing the jury concerning unreasonable force in connection with self-defense.

{¶ 15} We review a trial court's refusal to give a requested jury instruction for an abuse of discretion. *State v. Daniel*, 2016-Ohio-5231, ¶ 30 (8th Dist.). A trial court, however, has no discretion to misapply the law. *Morgan v. Greater Cleveland*

Regional Transit Auth., 2025-Ohio-1655, ¶ 64 (8th Dist.). Jury instructions must be considered as a whole. A requested instruction should be given when it correctly states the law, is applicable to the facts, and reasonable minds might reach the conclusion sought by the instruction. *Murphy v. Carrollton Mfg. Co.*, 61 Ohio St.3d 585, 591 (1991).

1. Complicity

{¶ 16} Davis first contends that the evidence did not support a complicity instruction because he did not fire the projectile that killed G.G. and because he testified that his decision to fire was independent of Deaver's conduct.

{¶ 17} R.C. 2923.03(A)(2) provides that no person, acting with the culpability required for commission of an offense, shall aid or abet another in committing the offense.

{¶ 18} In *State v. Johnson*, 93 Ohio St.3d 240 (2001), syllabus, the Supreme Court of Ohio held that a conviction for aiding and abetting requires evidence that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in committing the crime and shared the principal's criminal intent. The court further held that such intent may be inferred from the circumstances surrounding the crime. *Id.* at syllabus.

{¶ 19} Complicity therefore does not require proof of an express agreement between offenders. Participation and shared intent may be inferred from the defendant's presence, companionship, and conduct before and after the offense. *Johnson* at 245-246.

{¶ 20} The evidence permitted the jury to conclude that Davis participated in the same rapidly unfolding confrontation as Deaver. The record reflects that Deaver fired first and that Davis came outside afterward. Davis admitted firing toward the same occupied vehicle at which Deaver had fired, and forensic testing linked 14 recovered cartridge casings to Davis's weapon. Although Davis testified that Deaver had stopped firing before Davis began, the events occurred within the same confrontation and were directed toward the same occupied vehicle.

{¶ 21} Although Davis contends that the sequence of gunfire demonstrates that he acted independently, the fact that he fired after Deaver did not, standing alone, establish or defeat complicity. Subsequent conduct cannot retroactively assist an offense that has already been completed. *State v. Williams*, 2019-Ohio-2734, ¶ 76 (8th Dist.). It may, however, be considered with the other surrounding circumstances in determining whether the defendant shared the principal's criminal intent and supported, assisted, encouraged, cooperated with, advised, or incited the principal. *Johnson*, 93 Ohio St.3d at 245-246.

{¶ 22} Davis's conduct after the gunfire was part of that circumstantial record. At the hospital, he falsely told detectives that he had left before the shooting and omitted that he had fired a weapon. (Tr. 1150.) The jury could consider that conduct, together with the brothers' relationship, their common target, and the timing of the gunfire, when determining whether Davis acted with shared criminal intent. The jury was properly instructed that mere presence was insufficient and

that the State was required to prove assistance and shared criminal intent beyond a reasonable doubt.

{¶ 23} Moreover, the State was not required to establish that Davis personally fired the bullet that killed G.G. A person convicted as a complicitor is prosecuted and punished as if he were a principal offender. R.C. 2923.03(F).

{¶ 24} The trial court properly instructed the jury that mere presence was insufficient and that the State was required to prove beyond a reasonable doubt that Davis supported, assisted, encouraged, cooperated with, advised, or incited another offender and shared the offender's intent.

{¶ 25} Because there was evidence from which the jury could reasonably find that Davis acted in complicity with Deaver during and after the shooting, the trial court did not err by giving the instruction.

2. Aggravated Assault and Involuntary Manslaughter

{¶ 26} Davis next argues that the trial court should have instructed the jury on aggravated assault and involuntary manslaughter.

{¶ 27} Aggravated assault requires evidence that the offender acted while under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation reasonably sufficient to incite the person into using deadly force. R.C. 2903.12(A).

{¶ 28} Davis's own testimony did not establish that he acted under sudden passion or a fit of rage. Instead, Davis testified that he fired because he believed the occupants of the Durango were shooting at him, his family, and the residence. His

defense throughout trial was that his actions were necessary to respond to what he perceived to be an imminent deadly threat.

{¶ 29} The trial court expressly recognized this distinction, finding that neither defendant testified that he acted under sudden passion or rage. Rather, both testified that they acted because they feared a perceived threat. (Tr. 1201-1203.)

{¶ 30} The emotionally charged circumstances surrounding the shooting, standing alone, did not require an aggravated-assault instruction. The issue is not whether Davis experienced intense emotion but whether evidence existed from which the jury could reasonably find the statutory mitigating circumstance of sudden passion or a sudden fit of rage produced by reasonably sufficient provocation.

{¶ 31} The record did not require that conclusion. Because the evidence did not warrant an aggravated-assault instruction, it likewise did not warrant an involuntary-manslaughter instruction predicated upon aggravated assault.

{¶ 32} Independent of that evidentiary gap, Davis's theory of aggravated assault was also legally incompatible with his defense at trial. Davis defended the felonious-assault and murder charges solely on a theory of self-defense, and this court has held that self-defense does not apply to aggravated assault. *State v. Torres*, 2024-Ohio-837, ¶ 9 (8th Dist.), citing *State v. Hughkeith*, 2023-Ohio-1217, ¶ 102 (8th Dist.). Because Davis argued only that he acted in self-defense, the trial court properly declined to instruct on the inferior offense of aggravated assault on this independent ground as well.

3. Unreasonable Force

{¶ 33} Davis further argues that the trial court improperly instructed the jury that the State could disprove self-defense by establishing that the force used was unreasonable or greatly disproportionate to the apparent danger.

{¶ 34} The trial court instructed the jury as follows: “A person is allowed to use force that is reasonably necessary under the circumstances to protect himself, or another or a residence from an apparent danger. If you find that the State proved beyond a reasonable doubt that the defendants used more force than reasonably necessary, and that the force used was greatly disproportionate to the apparent danger, then the State proved beyond a reasonable doubt that the defendant did not act in self-defense.” (Tr. 1247-1248.)

{¶ 35} The instruction accurately informed the jury that the reasonableness of the force used must be evaluated in light of the danger reasonably perceived by the defendant. This court has recognized that the amount of force used in self-defense must be reasonable and that whether a defendant used unreasonable force in repelling a perceived danger is a question of fact for the jury. *State v. Coates*, 2025-Ohio-5340, ¶ 99 (8th Dist.); *State v. Taslitz*, 2015-Ohio-3474, ¶ 20 (8th Dist.). The instruction did not direct the jury to evaluate Davis’s actions through hindsight or require that his belief ultimately prove correct.

{¶ 36} The trial court further instructed the jury concerning transferred justification and expressly informed the jury that if the State failed to disprove self-

defense beyond a reasonable doubt, the defendants were not guilty even if a bystander was killed or property was damaged.

{¶ 37} Reading the instructions as a whole, we find no error.

{¶ 38} Davis's first assignment of error is overruled.

B. Prearrest Silence

{¶ 39} In his second assignment of error, Davis argues that the State violated his Fifth Amendment privilege against self-incrimination by presenting evidence concerning matters that he did not tell investigators before his arrest and by referencing his failure to later contact police to correct his initial account.

{¶ 40} Davis specifically challenges (1) Det. Dayton's testimony that Davis did not tell him, during the hospital interview, that he had fired a weapon, that the Durango occupants had fired at the residence, or that he had been present when G.G. was shot; and (2) references at trial to Davis's failure to contact police after that interview to correct his account.

{¶ 41} The Fifth Amendment privilege against self-incrimination generally "is not self-executing," and a defendant who wishes its protection "must claim it." *Salinas v. Texas*, 570 U.S. 178, 181 (2013), quoting *Minnesota v. Murphy*, 465 U.S. 420, 425, 427 (1984), quoting *United States v. Monia*, 317 U.S. 424, 427 (1943). Consequently, prosecutors may use a defendant's prearrest silence as substantive evidence of guilt if the defendant did not expressly invoke the right to remain silent, and forfeiture of the privilege. *Abby v. Howe*, 742 F.3d 221, 228 (6th Cir. 2014), citing *Salinas* at 183, 189-190.

{¶ 42} In *State v. Leach*, 2004-Ohio-2147, ¶ 38, the Supreme Court of Ohio held that the use of a defendant's prearrest silence as substantive evidence of guilt violates the Fifth Amendment privilege against self-incrimination. *Leach* separately recognized, however, that prearrest silence may be used to impeach a defendant who elects to testify. *Id.* at ¶ 21-22, 33. Subsequently, the United States Supreme Court held in *Salinas* that the Fifth Amendment privilege generally must be expressly invoked, and the Sixth Circuit has applied *Salinas* to uninvoked prearrest silence. *Abby*, 742 F.3d at 228. This court applied those principles to the same investigation in *State v. Deaver*, 2026-Ohio-2539, ¶ 34-42 (8th Dist.).

{¶ 43} Davis voluntarily spoke with police at the hospital. He told investigators that he had been at the residence but claimed that he left before the shooting. According to Det. Dayton, Davis did not state that he had fired a weapon, that the Durango occupants had fired at the residence, or that he had been present when G.G. was shot. Davis never invoked his privilege against self-incrimination during that interview, and he was not then in custody or under arrest.

{¶ 44} There is no indication that Davis was asserting a right to remain silent when he omitted those details or when he later failed to contact police to correct the account he gave at the hospital. During the weeks between the hospital interview and his arrest, Davis had not been charged with or accused of a crime, and the record does not demonstrate that any governmental action induced him to remain silent during that period. His silence accordingly was not the functional equivalent of

invoking the privilege, and the Fifth Amendment's protections were never triggered. *Salinas* at 181, 189-190.

{¶ 45} At trial, Davis gave a materially different account. He acknowledged that he was present, that he retrieved a firearm, and that he discharged multiple rounds at the Durango because he believed his family was under attack. Because Davis never invoked his privilege, the State was permitted to introduce his voluntary, uninvoked statements and to demonstrate that his trial testimony conflicted with the account he initially chose to give investigators. A defendant who elects to speak with police without invoking the privilege does not later acquire constitutional protection for omissions or inconsistencies in that voluntary statement simply because a fuller account emerges at trial.

{¶ 46} The testimony was also independently admissible on the two grounds *Leach* recognizes. The comparison of Davis's initial account with his trial testimony was permissible impeachment. *Leach*, 2004-Ohio-2147, at ¶ 21-22, 33. The testimony describing what information investigators possessed and the investigative steps that followed was separately relevant to explain the course of the investigation. *See State v. Lucas*, 2020-Ohio-1602, ¶ 107 (8th Dist.); *State v. Collins*, 2020-Ohio-4136, ¶ 49 (8th Dist.); *see also Deaver* at ¶ 40-42.

{¶ 47} For the same reasons, Davis's failure to later contact police to correct his account does not establish a constitutional violation. That omission occurred before Davis was charged or taken into custody, was not induced by any governmental action, and was not accompanied by any invocation of the privilege.

See State v. Register, 2025-Ohio-106, ¶ 40 (8th Dist.) (holding that there no violation of the privilege against self-incrimination where testimony concerned defendant's conduct before being accused or charged with a crime).

{¶ 48} The jury heard Davis admit that he fired toward an occupied Durango on a residential street, and forensic testing linked 14 recovered cartridge casings to his 7.62 x 39 mm firearm. Four occupants of the Durango were identified as victims. Physical evidence established that bullets struck vehicles and a residence across the street. The surveillance evidence captured the sequence of the shooting, and extensive forensic evidence connected Davis's weapon to the gunfire. This evidence confirms that the challenged testimony served the permissible purposes described above, contrasting Davis's affirmative initial statement that he had left before the shooting with his materially different trial testimony admitting that he was present and fired repeatedly, and explaining the course of the ensuing investigation.

{¶ 49} The trial court gave a limiting instruction concerning the text-message evidence, but that instruction did not address Davis's prearrest silence. As to silence, the court permitted fair impeachment while explaining to counsel that an argument treating silence itself as proof of guilt would be stricken and the jury admonished. (Tr. 918-920.) In its final charge, the court instructed the jury that closing arguments were not evidence and that Davis's testimony should be evaluated under the same standards applicable to other witnesses. (Tr. 1229, 1233-1234.) The jury is presumed to have followed the instructions given. *State v. Garner*, 74 Ohio St.3d 49, 59 (1995).

{¶ 50} Accordingly, because Davis did not expressly invoke his privilege against self-incrimination and his silence was not induced by governmental action, the State's use of his voluntary statements, their inconsistency with his trial testimony, and the explanation of the ensuing investigation did not violate his Fifth Amendment privilege against self-incrimination.

{¶ 51} Davis's second assignment of error is overruled.

C. Tinted-Window Testimony

{¶ 52} In his third assignment of error, Davis argues that the trial court improperly allowed Detective Gonzalez to testify concerning her experience with vehicles having tinted windows.

{¶ 53} Evid.R. 401 defines relevant evidence as evidence having any tendency to make the existence of a fact of consequence more or less probable. Relevant evidence is generally admissible unless otherwise excluded. Evid.R. 402.

{¶ 54} Evid.R. 403(A) requires exclusion of relevant evidence when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

{¶ 55} The defense repeatedly elicited testimony suggesting that the Durango's darkly tinted windows and slow movement reasonably signaled an impending drive-by shooting. The defense questioned witnesses about whether slow-moving vehicles with tinted windows were suspicious, whether such vehicles were associated with drive-by shootings, and whether the Durango occupants should have identified themselves to persons outside the residence.

{¶ 56} Having placed the significance of those characteristics directly at issue, the defense opened the door to the State's rebuttal testimony concerning the prevalence and significance of tinted windows. *See State v. Greer*, 39 Ohio St.3d 236, 243 (1988) (a party may open the door to otherwise inadmissible evidence by first introducing evidence on the subject).

{¶ 57} Detective Gonzalez's testimony that vehicles with tinted windows were common and did not, by themselves, necessarily indicate a threat was relevant to the reasonableness of the defendants' asserted perception of danger.

{¶ 58} The testimony also was not prohibited other-acts evidence under Evid.R. 404(B). It was not offered to demonstrate Davis's character or propensity to engage in criminal conduct. Rather, it responded to a factual proposition advanced by the defense.

{¶ 59} Nor do we find that the testimony's probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury under Evid.R. 403(A). The jury remained responsible for determining whether Davis's belief was reasonable under the circumstances confronting him, not under the circumstances confronting a police detective.

{¶ 60} We find that the trial court did not abuse its discretion in admitting the evidence.

{¶ 61} Davis's third assignment of error is overruled.

D. Manifest Weight

{¶ 62} In his fourth assignment of error, Davis argues that his convictions are against the manifest weight of the evidence because the evidence established that he acted in self-defense, defense of others, or defense of his residence.

{¶ 63} When reviewing a manifest-weight challenge, an appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers witness credibility, and determines whether, in resolving conflicts in the evidence, the factfinder clearly lost its way and created a manifest miscarriage of justice. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). Although the appellate court acts as a thirteenth juror, it must give appropriate deference to the factfinder's credibility determinations because the factfinder directly observed the witnesses. *State v. Reillo*, 2026-Ohio-2701, ¶ 17-23.

{¶ 64} Under R.C. 2901.05(B)(1), once evidence tending to support self-defense is presented, the State bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

{¶ 65} The Supreme Court of Ohio has explained that the defendant retains the burden of production on self-defense, while the State bears the burden of persuasion. On appeal, the State's satisfaction of its burden of persuasion is reviewed under the manifest-weight standard. *State v. Messenger*, 2022-Ohio-4562, ¶ 26-27.

{¶ 66} Davis testified that he believed the Durango occupants had fired at the residence and had shot G.G. He further testified that when he observed a door of the Durango opening, he believed the occupants intended to continue shooting.

{¶ 67} The jury was not required to accept that account.

{¶ 68} The Durango occupants testified that they did not possess or fire weapons. The jury viewed surveillance evidence concerning the vehicle's movement and the timing of the gunfire. It heard testimony regarding the distinction between fireworks and gunfire and considered physical evidence recovered from the scene and from the Durango.

{¶ 69} The jury also heard evidence that Davis had known three of the four occupants of the Durango since high school, although he testified that he did not recognize the occupants when he fired; that he did not see anyone in the Durango fire a weapon; that no firearm or shell casings attributable to gunfire from the Durango were recovered; and that Davis initially provided police with an account inconsistent with his trial testimony. (Tr. 942-943, 1155-1159, 1150.)

{¶ 70} Although evidence existed supporting Davis's perception of a threat, the existence of conflicting evidence does not render the verdict against the manifest weight of the evidence.

{¶ 71} The trier of fact was entitled to assess Davis's credibility, the credibility of the Durango occupants, the surveillance evidence, and the physical evidence and determine whether the State disproved self-defense beyond a reasonable doubt.

{¶ 72} After independently reviewing the record, we cannot say this is the exceptional case in which the jury clearly lost its way.

{¶ 73} Davis's fourth assignment of error is overruled.

E. Sufficiency of the Evidence

{¶ 74} In his fifth assignment of error, Davis argues that the trial court erred by denying his Crim.R. 29 motion because the State presented insufficient evidence to support his convictions, particularly Count 1, felony murder, and Count 6, improperly discharging a firearm at or into a habitation.

{¶ 75} A Crim.R. 29 motion tests the sufficiency of the evidence. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

1. Felony Murder

{¶ 76} R.C. 2903.02(B) provides that no person shall cause the death of another as a proximate result of committing or attempting to commit an offense of violence that is a felony of the first or second degree and is not a violation of R.C. 2903.03 or 2903.04.

{¶ 77} Davis emphasizes that the forensic evidence established that his 7.62 x 39 mm firearm did not fire the projectile that killed G.G. That evidence does not resolve the sufficiency question because Davis was prosecuted under a theory of complicity.

{¶ 78} R.C. 2923.03(F) provides that a person who violates the complicity statute shall be prosecuted and punished as if he were a principal offender. Therefore, the State was not required to prove that Davis personally fired the fatal projectile if sufficient evidence established that he aided or abetted the predicate felony from which G.G.'s death proximately resulted.

{¶ 79} Under *Johnson*, 2001-Ohio-1336, at syllabus, complicity exists when the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal and shared the principal's criminal intent. Intent may be inferred from the circumstances surrounding the offense. *Id.*

{¶ 80} The evidence, viewed most favorably to the State, established more than Davis's mere presence. The evidence reflects that Deaver fired first and that Davis, who had been inside the residence, came outside afterward. Davis testified that Deaver had stopped firing before he began. Nevertheless, both men fired toward the same occupied Durango during the same rapidly unfolding confrontation. Davis admitted firing toward the Durango, and forensic testing linked 14 recovered cartridge casings to his weapon. His actions were not passive or incidental to the confrontation involving the occupants of the vehicle.

{¶ 81} The fact that Davis fired after Deaver did not itself establish that Davis aided an already completed offense. The relevant question was whether, viewing all of the surrounding circumstances in the light most favorable to the State, the jury could infer that Davis shared the requisite criminal intent and supported, assisted, encouraged, or cooperated with Deaver in committing the predicate felonious

assaults. *Johnson* at syllabus. In making that determination, the jury could consider Davis's relationship with Deaver, the common target, the immediacy of Davis's response to the same perceived threat, and Davis's conduct during and immediately after Deaver's gunfire. *See Johnson* at 245-246.

{¶ 82} The sequencing of the shots was therefore relevant, but it was not dispositive of complicity as a matter of law. The jury could consider the entire course of conduct, including Davis's false statement at the hospital after the shooting, in determining whether the defendants acted pursuant to a shared criminal purpose. Although no express agreement was required, the State remained obligated to prove beyond a reasonable doubt that Davis did more than act independently after Deaver and that he possessed the culpability required for the predicate offense.

{¶ 83} Complicity does not require that each participant personally perform every act constituting the offense. A defendant may be convicted as a complicitor when the evidence, including reasonable inferences drawn from the surrounding circumstances, establishes the assistance and shared culpability required by R.C. 2923.03(A)(2). *Johnson* at syllabus.

{¶ 84} Viewing the evidence in the light most favorable to the State, a rational juror could find beyond a reasonable doubt that Davis knowingly aided and abetted the felonious assault and was therefore legally accountable for the death proximately resulting from that offense.

{¶ 85} We cannot say that the State did not present sufficient evidence supporting Count 1.

2. Improper Discharge into a Habitation

{¶ 86} Davis also challenges his conviction under R.C. 2923.161(A)(1), which prohibits a person, without privilege to do so, from knowingly discharging a firearm at or into an occupied structure that is a permanent or temporary habitation.

{¶ 87} Davis argues that the State failed to present direct testimony from the homeowner establishing that he lacked permission to fire into the residence.

{¶ 88} The State, however, may establish an element of an offense through direct or circumstantial evidence. Direct evidence is testimony given by a witness who perceived the facts to which the witness testifies, while circumstantial evidence is proof of facts or circumstances from which the existence of other facts may reasonably be inferred. *State v. Nicely*, 39 Ohio St.3d 147, 150 (1988). Circumstantial evidence and direct evidence possess the same probative value. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph one of the syllabus.

{¶ 89} The evidence established that shots were fired across a residential roadway during an outdoor Fourth of July gathering and that one projectile entered a neighboring residence.

{¶ 90} From those circumstances, a rational jury could reasonably infer that Davis and Deaver did not possess permission or any other independent privilege to discharge firearms into the neighboring home. As the Second District explained in *State v. Thompson-Rivers*, 2025-Ohio-5067, ¶ 60 (2d Dist.), common sense dictates that a person ordinarily does not have a privilege to discharge a firearm at or into an occupied structure. The State was not required to call the homeowner to utter the

specific words that the defendants lacked permission to shoot through the residence. This conclusion is consistent with the analysis of the same evidence in the companion appeal involving Deaver. *State v. Deaver*, 2026-Ohio-2539, ¶ 72-75 (8th Dist.).

{¶ 91} The trial court reached the same conclusion when denying the Crim.R. 29 motion, reasoning that the absence of permission could be inferred circumstantially from the surrounding facts.

{¶ 92} To the extent Davis claimed privilege through self-defense, that theory was separately submitted to the jury. The jury rejected it, and we have determined that its rejection was not against the manifest weight of the evidence.

{¶ 93} We determine that the evidence was sufficient to sustain the conviction on Count 6.

{¶ 94} Davis's fifth assignment of error is overruled.

F. Consecutive Sentences

{¶ 95} In his sixth assignment of error, Davis argues that the record does not support the findings required for consecutive sentences.

{¶ 96} R.C. 2929.14(C)(4) authorizes consecutive sentences if the trial court finds that consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.

{¶ 97} The court must additionally find one of the following circumstances under R.C. 2929.14(C)(4): (a) the offender committed one or more of the multiple offenses while awaiting trial or sentencing, while under a sanction imposed pursuant to R.C. 2929.16, 2929.17, or 2929.18, or while under postrelease control; (b) at least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the offenses was so great or unusual that no single prison term adequately reflects the seriousness of the offender's conduct; or (c) the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

{¶ 98} Under R.C. 2953.08(G)(2), this court may modify or vacate consecutive sentences only if we clearly and convincingly find that the record does not support the trial court's findings.

{¶ 99} Most recently, the Supreme Court of Ohio explained in *State v. Polizzi*, 2026-Ohio-2588, ¶ 12-18, that appellate review under R.C. 2953.08(G)(2) is deferential. The appellate court asks whether the record clearly and convincingly does not support the statutory findings, not whether the appellate court would have imposed a different sentence.

{¶ 100} The record reveals the trial court made the required findings at the sentencing hearing and incorporated them into the sentencing entry.

{¶ 101} The court found that consecutive sentences were necessary to protect the public from future crime and to punish the offenders and that

consecutive sentences were not disproportionate to the seriousness of their conduct or the danger they posed to the public. (Tr. 1415-1416.)

{¶ 102} The court further found that at least two offenses were part of one or more courses of conduct and that the resulting harm was so great or unusual that no single prison term adequately reflected the seriousness of the conduct. *Id.*

{¶ 103} As to Davis specifically, the court made an additional finding under R.C. 2929.14(C)(4)(a). The court found that Davis committed one or more offenses while under a sanction because he was on probation for having a weapon while under disability. (Tr. 1416.)

{¶ 104} The record also supports the court's proportionality determination. The court identified three distinct categories of harm: G.G.'s death, the felonious assaults involving the four occupants of the Durango, and the danger and property harm created when rounds were fired across a residential roadway, and one entered a neighboring residence. (Tr. 1416-1417.)

{¶ 105} Davis emphasizes his age, criminal history, belief that he was acting defensively, and the trial court's description of the incident as a tragic mistake.

{¶ 106} Those considerations do not establish that the statutory findings are clearly and convincingly unsupported. The consecutive-sentence statute required the court to evaluate the seriousness of Davis's conduct, the danger he posed, the course of conduct, and the resulting harm; it did not require a separate finding that Davis intended every resulting harm. *See* R.C. 2929.14(C)(4); *State v. Bonnell*, 2014-Ohio-3177, ¶ 29-30.

{¶ 107} Nor may this court substitute its judgment for the sentencing court merely because a different aggregate sentence could also have been reasonable. *Polizzi*, 2026-Ohio-2588, at ¶ 17-18.

{¶ 108} Upon review, we cannot clearly and convincingly find that the record does not support the consecutive-sentence findings.

{¶ 109} Davis's sixth assignment of error is overruled.

III. Conclusion

{¶ 110} Davis's six assignments of error are overruled.

{¶ 111} The trial court did not err by instructing the jury on complicity, declining to instruct the jury on aggravated assault and involuntary manslaughter, or instructing the jury concerning the reasonable degree of force permitted in self-defense.

{¶ 112} The State did not violate Davis's privilege against self-incrimination by introducing his voluntary statements, comparing those statements with his trial testimony, or presenting testimony explaining the course of the investigation. Even assuming, without deciding, that an isolated reference to his failure to later contact police was improper, any error was harmless beyond a reasonable doubt in light of Davis's voluntary inconsistent statement, his admission that he fired toward the Durango, the forensic evidence linking 14 recovered cartridge casings to his weapon,

the physical and surveillance evidence, and the remaining evidence presented at trial.

{¶ 113} The trial court did not abuse its discretion in admitting the testimony concerning tinted vehicles. The jury's rejection of Davis's claim of self-defense was not against the manifest weight of the evidence, and sufficient evidence supported the convictions under both principal and complicity theories.

{¶ 114} Finally, the record does not clearly and convincingly fail to support the trial court's consecutive-sentence findings under R.C. 2929.14(C)(4).

{¶ 115} The judgment of the trial court is affirmed.

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 Cuyahoga County Court of Common Pleas 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.

ANITA LASTER MAYS, JUDGE

EILEEN T. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR