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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

Case No: CR-18-624729-A

Judge: JOHN P O'DONNELL

SHAWN REESE
Defendant

INDICT: 2903.02 MURDER /FRM1 /FRM3
2903.02 MURDER /FRM1 /FRM3
2903.11 FELONIOUS ASSAULT /FRM1 /FRM3
ADDITIONAL COUNTS...

JOURNAL ENTRY

JUDGMENT ENTRY AFTER A BENCH TRIAL. O.S.J.

SENTENCING SET FOR 08/28/2018 AT 11:00 AM.

08/21/2018
CPJPO 08/21/2018 09:18:57

Judge Signature

Date

8/21/2018

CLERK OF COURTS
CUYAHOGA COUNTY

2018 AUG 21 P 2:40

FILED

HEAR
08/21/2018

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO)	CASE NO. CR 18 624729
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY AFTER</u>
)	<u>A BENCH TRIAL</u>
SHAWN REESE)	
)	
Defendant.)	

John P. O'Donnell, J.:

Rakim Grant was shot to death in defendant Shawn Reese's house on August 10, 2017. The indictment in this case charges Reese with four crimes in connection with the killing: murder, felony murder, felonious assault and tampering with evidence. On August 14, 2018, the defendant waived a jury trial and the case was tried to the court over three days. This judgment follows.

Sources of the evidence

Eight witnesses testified for the prosecution at trial. They are: Nefertiti Reese, the defendant's mother; Terrence Hardwick, Nefertiti Reese's ex-husband; James Grotenrath, Mark Worsencraft and Taylor Cunningham, three Cleveland police officers on the crime scene within minutes; David Borden, a Cleveland police detective overseeing the investigation into the killing; Curtiss Jones, a trace evidence specialist and supervisor in the Cuyahoga County medical examiner's office; and David Dolinak, M.D., a forensic pathologist who autopsied Grant. The

State of Ohio also admitted 76 exhibits into evidence, including a video recording of a nearly 45-minute statement Reese gave to Borden after his arrest in December 2017. The defendant's sole witness was Taniah Hardwick, the daughter of Nefertiti Reese and Terrence Hardwick.

What follows are my conclusions, beyond a reasonable doubt and based upon the credible direct evidence of record plus reasonable inferences drawn from it, about the facts of what happened leading up to and after Grant's violent death.

The evidence

Grant came to Reese's house at 3301 East 137 in Cleveland's Kinsman neighborhood in the evening of August 10. According to the defendant, Grant was there to give him a tattoo, and that assertion is supported by the fact that a set of tattoo tools was found during the investigation of the shooting. Reese and Grant were in the basement. Nefertiti Reese and Taniah Hardwick lived with Reese and they were on the first floor. Taniah Hardwick was on crutches because of a knee surgery two days earlier and her father, who does not live at the home, was there to assist in the early stages of her recovery. He was on the second floor.

A door on the driveway side of the house leads to a landing. Down about eight steps from the landing is the basement recreation room; up the landing about four steps is the kitchen and the first floor living room is beyond the kitchen.

Reese and Grant began to argue in the basement. The reason is not clear: Reese told the police that he discovered that Grant had stolen some money he had stashed in the recreation room's drop ceiling so he grabbed Grant's front pocket to get his money back; Grant never had the chance to give his side of the story. Suffice to say a struggle began.

The defendant's three family members offered different accounts of what happened next. Nefertiti Reese claims to have gone in the basement after hearing her son call for help and seeing

the men “in a tussle . . . you know, in a fight.” She tried to physically separate them but couldn’t, and she claims that one of them said “get out of the way, you’re going to make the gun go off,” yet she never testified to seeing a gun, although she did say Grant was holding something under his arm. The two men and Nefertiti Reese eventually ended up in the living room where Grant was “in an embrace with my son.” At that point the fray was moving toward Taniah Reese, whose limited mobility made her vulnerable to getting hurt, so Nefertiti Reese moved her daughter to a back room and then called 911 twice in quick succession.

Taniah Hardwick testified that she was upstairs when she heard Reese yell “Help. Get dad. He got a gun.” She then saw the two men clutching and “tussling” on the basement stairs, with Grant on top of the defendant and her mother trying to break up the fight. She did not see a gun but claims Grant told her mother to move away because the gun’s safety was not on. At that point she backed into the living room and didn’t see anything else but she did hear the side door opening and Reese saying “just leave,” to which Grant replied “no” and then she heard gunshots. According to Taniah Hardwick, Grant got shot “outside of the house.” She too called 911.

Terrence Hardwick was upstairs in his daughter’s bedroom when he heard her scream for him. When he came downstairs his daughter was “panicking” and “hysterical” saying that someone had just shot a gun in the house. Terrence Hardwick then saw Grant holding Reese on the side door landing in a “reverse headlock.” He did not see a gun and did not see any blood at that point. Nefertiti Reese was right near them and she told Terrence Hardwick to call 911 and he went back upstairs to use his phone for the call, during which he heard three gunshots. When he returned downstairs both men were gone but he heard a voice from the driveway near the storm door, gurgling blood and gasping for air, saying “Please, I got kids.”

Recordings of three of the four 911 calls are in evidence as exhibits, but all four were played in court during the trial. According to the time stamps on the recordings Terrence Hardwick made the first call at 2103:02, Nefertiti Reese called next at 2103:48 and then again at 2104:07. Taniah Hardwick called at 2103:54.

Terrence Hardwick began his call by saying “somebody just got shot in my house.” When the operator asked the age of the injured person he said “I don’t know, he’s still shooting” inside the house and that he can’t describe what the shooter looks like. He then asserted that both people were shooting at each other. The quality of the recording of Nefertiti Reese’s first call is mixed, apparently because of her phone connection, and it is evident that the 911 dispatcher had difficulty understanding her first words, but she can be heard to say “gunshots fired, 3301” before the call cuts off. During her second call she doesn’t say much that is intelligible beyond that, but she does deny knowing whether “anyone is down.” Taniah Hardwick’s call to 911 is not in evidence as an exhibit but it was played in open court during her testimony. During her call she did not name her brother as either a person who fired shots or was shot at. The same can be said for her parents: neither of them reported that Shawn Reese had been shot, or shot at, nor did they name him as a shooter.

Although Reese was on probation for improperly handling firearms in a motor vehicle all three of his family members said he was not known to have a gun.

The exact time the first police officer arrived at the scene is not in evidence, but Worsencraft’s body worn camera shows his car pulling up on East 137 at 2114, or 9:14 p.m., about 11 minutes after the first 911 call, just as he is receiving a radio call that other officers were surrounding the house and a man – who turned out to be Terrence Hardwick – was emerging from the house with his hands up.

Reese was gone before the first police officer reached the scene. Grant was prone and lifeless against the side of the house near the door. There is no evidence that he had any cash. No guns were turned up in a search of the house and premises. Copious blood – all of it Grant's – was seen on the right wall descending the stairs to the basement, the landing at the top of those stairs, the linoleum steps going up to the kitchen and the carpeted steps going down to the basement. Four spent shell casings were discovered: one of them on the landing, two at the base of the wall at the bottom of the steps and another a few feet from those two into the recreation room. A single unfired bullet was on the bottom step in the basement and a spent bullet was on the floor near the two casings at the end of the stairs. All of the casings and the bullet were .40 caliber.

Dolinak's autopsy revealed that Grant had been shot once through the left cheek and once in the right side of his chest. The bullet to the head exited through the right side of his neck where it tore the carotid artery, causing significant external and internal bleeding and, ultimately, Grant's death. The other bullet went out his left hip. Neither entrance wound revealed stippling (dotted abrasions on the skin from unburned gunpowder expelled from the gun's barrel) or fouling (the residue from burned gunpowder), suggesting that the muzzle of the gun was at least two feet away from Grant when it was fired.

A warrant was issued for Reese's arrest and he was eventually arrested in mid-December 2017. His whereabouts during those four months were not established by the evidence, but he did get money and clothes from his mother from time to time.

Discussion

Count one of the indictment alleges murder under section 2903.02(A) of the Ohio Revised Code. The elements of that crime are purposely causing the death of Rakim Grant. The plaintiff and defendant both agreed that in the event of a not guilty judgment on the murder charge, or if I am unable to reach a decision on count one, the evidence supports a consideration of the lesser included offense of reckless homicide under R.C. 2903.041. The elements of that crime are recklessly causing the death of Rakim Grant. The defendant has further requested the consideration of a second lesser included offense of negligent homicide under R.C. 2903.05, the elements of which are negligently causing the death of Rakim Grant by means of a deadly weapon or dangerous ordnance.

Count two alleges felony murder pursuant to R.C. 2903.02(B), i.e. that Reese caused the death of Rakim Grant as a proximate result of committing a felonious assault. And count three alleges that Reese knowingly caused serious physical harm to Rakim Grant, felonious assault, a violation of R.C. 2903.11(A)(1). Finally, count four is for tampering with evidence in violation of R.C. 2921.12(A)(1).

Pursuant to section 2901.05(A) of the Ohio Revised Code, the prosecutor has the burden of proving the crimes charged beyond a reasonable doubt. Reasonable doubt exists where the fact finder cannot say he is firmly convinced of the truth of a charge. R.C. 2901.05(E).

All of the first three counts and the two lesser included offenses have the common element of causing Grant's death.¹ "Cause" is an act which, in a natural and continuous sequence, directly produces a result and without which it would not have occurred. It is thus necessary to first

¹ The felonious assault charge alleges that Reese caused serious physical harm, not death, but for the purpose of this analysis the same conduct that caused Grant's death caused serious physical harm.

examine the evidence to determine whether Reese engaged in conduct which, regardless of his mental state, caused Grant's demise. To put it simply: did Reese shoot Grant?

Based upon the mere fact that Grant was shot, the initial universe of possibilities includes 1) the gun discharging accidentally without a person pulling the trigger, 2) Grant pulling the trigger himself, either accidentally or on purpose, 3) Reese pulling the trigger, either accidentally or on purpose, or 4) a third person pulling the trigger. Some of these possibilities are merely theoretical and easily eliminated. First, an accidental discharge without a person pulling the trigger is highly unlikely to begin with and would in any event not happen twice. Accidental discharge is also excluded by the existence of four spent shell casings. Second, the only evidence of a third person is Reese's unsworn, and unbelievable, statement to the police that an associate of Grant's came to the home and shot at Reese from near the side door landing, causing a bullet to whiz by his ear. It would be easy to dismiss this claim as preposterous and move on, but it is worth dissecting to show its outlandishness. If there were a third person he had to be there long enough to shoot at Reese and miss and to shoot Grant twice, once on each side of his body, yet none of Reese's family members saw another person at the house. Additionally, Reese said he was fixing his car with a neighbor that night when Grant "pulled up," but Reese did not identify the neighbor, much less call him as a witness, to see whether he would buttress the claim that Grant came with a friend. Moreover, the coincidence that the man would step into the house to shoot Grant at precisely the time Grant and Reese were arguing or fighting over money is too unlikely to give the story any credit.

The next possibility is Grant shooting himself. If Grant pulled the trigger accidentally there would not have been two shots to two different sides of his body, not to mention another two missed shots as evidenced by the total of four spent shell casings. If Grant pulled the trigger on

purpose then he committed suicide, a proposition utterly incompatible with the four spent casings, the location of the wounds to his body, the testimony of every witness and common sense.

This leads to the conclusion, beyond a reasonable doubt, that Reese shot Grant. Moreover, it could not have been accidental based on the multiple wounds to different areas on opposite sides of Grant's body. Accident is also ruled out by Reese's family members, none of whom testified that Reese and Grant were fighting over control of a gun. For these reasons, I conclude beyond a reasonable doubt that defendant Shawn Reese's intentional act of shooting a gun at Rakim Grant caused Grant's death. The common element of each of counts one, two, three and the lesser included offenses has therefore been established, leaving only the question of Reese's state of mind, or *mens rea*.

There is no credible direct evidence that Grant ever fired the gun, and such a finding is incompatible with the circumstantial evidence. The evidence establishes that Reese fired all four shots and they were fired inside the house. Grant was hit twice – on different sides of his body – and Reese missed with two shots. Reese left Grant to die ignominiously in a shelling rain while he ran from the police. All of this evidence is consistent with an intention to cause death, and I find beyond a reasonable doubt that defendant Shawn Reese purposely caused the death of Rakim Grant. I further find that, in the course of purposely causing the death, Reese knowingly caused serious physical harm to Rakim Grant and that Grant's quickly ensuing death was a proximate result of that conduct.

In accordance with these factual findings I find that defendant Shawn Reese is guilty, beyond a reasonable doubt, of the murder of Rakim Grant as charged in count one, felony murder as charged in count two, and felonious assault as charged in count three.

The elements of count four, tampering with evidence, are that Reese, knowing that an official proceeding or investigation was in progress, or was about to be or likely to be instituted, did alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation. The item the state alleges he concealed, removed, etc. is the gun used in the killing.

The evidence on this count is circumstantial but convincing. Reese was undoubtedly aware that at least one of the people in his house had summoned the police; indeed, if they are to be believed it was Reese who told them to call 911. At a minimum, he knew a shooting in his mother's house, with a dead body in the driveway, would not escape the attention of law enforcement. He left the scene immediately, in a rainstorm, in the less than ten minutes² before the police arrived. He took the gun with him. While he may have had more than one purpose in taking the gun – for example, to use or sell in addition to keeping it from being used as evidence – I find beyond a reasonable doubt that a purpose of Reese in removing the gun was to impair its availability as evidence in the official investigation that he knew was likely, and he is guilty of count four.

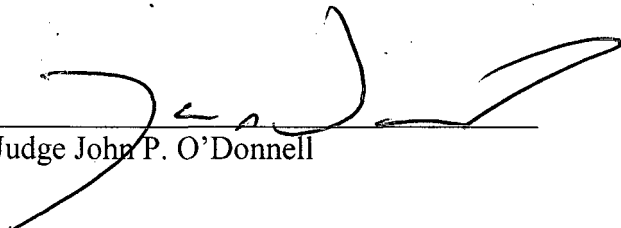
Counts one two and three each include the same two firearm specifications. The first is for having a firearm while committing a crime and the second is for using it. R.C. 2941.141(A) and 29141.145(A). Since I have found that Reese caused serious physical harm and death to Grant by shooting him, I further find that Reese is guilty of these two specifications on all three counts.

A sentencing hearing is scheduled for August 28, 2018, at 11:00 a.m. The prosecutor and defense counsel are ordered to meet and confer before then with the aim of stipulating that certain

² Trial Exhibit 80 is an image of the driveway from a police officer's body worn camera. The time stamp is 9:12:33, less than ten minutes from Terrence Hardwick's 911 call.

of these counts and specifications are allied offenses of similar import and the plaintiff informing the defendant's counsel of the charge, or charges, the prosecutor elects the defendant to be sentenced on.

IT IS SO ORDERED:



Judge John P. O'Donnell

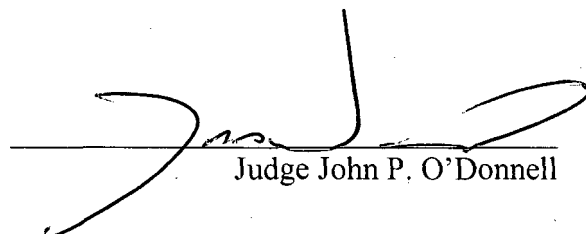
Date: August 21, 2018

SERVICE

A copy of this judgment entry was emailed to the following on August 21, 2018:

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Judge John P. O'Donnell