

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-130327
		TRIAL NO. B-1206131
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
CHARLES BLACK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Charles Black appeals convictions for aggravated robbery under R.C. 2911.01(A)(3), one count of felonious assault under R.C. 2903.11(A)(1), and one count of kidnapping under R.C. 2905.01(A)(2), which were related to the robbery and kidnapping of cab driver Mulugeta Shiferaw. Black was also convicted of one count of failure to comply with an order or signal of a police officer under R.C. 2921.331(B), and two counts of felonious assault under R.C. 2903.11(A)(2) stemming from his attempt to run down two police officers following a car chase in Shiferaw's cab. The trial court sentenced him to serve a total of 55 years in prison. We find no merit in Black's five assignments of error, and we affirm his convictions.

In his first assignment of error, Black contends that the trial court erred in overruling his challenge, under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90

L.Ed.2d 69 (1986), to the state's use of a peremptory challenge to exclude the only African-American juror from the jury panel. He argues that the state's reason for challenging the juror was self-serving, and that the challenge removed an otherwise unbiased and qualified juror based on his race. This assignment of error is not well taken.

The record shows that the state provided a valid, race-neutral reason for the use of the peremptory challenge. The prosecutor noted the juror's demeanor and appearance, saying that the juror appeared to have "some kind of problem" with his "mental acuity." The prosecutor added, "I don't think he is capable of handling this matter." The trial court agreed, stating, "There does seem to be something slightly off that may not be reflected in the record. I do appreciate the fact that he did answer that question somewhat strangely[.]"

The explanation need not rise to the level justifying the exercise of a challenge for cause. *State v. O'Neal*, 87 Ohio St.3d 402, 409, 721 N.E.2d 73 (2000); *State v. Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, ¶ 18. Body language and demeanor are permissible race-neutral reasons for the exercise of a peremptory challenge. *State v. Williams*, 1st Dist. Hamilton No. C-130277, 2014-Ohio-1526, ¶ 40. Discriminatory intent was not inherent in the state's explanation, and the trial court's acceptance of the state's reason was not clearly erroneous. *See Thomas* at ¶ 15-16. Consequently, we overrule Black's first assignment of error.

In his second assignment of error, Black contends that he was denied a fair trial due to prosecutorial misconduct. He argues that the trial court erred in allowing the prosecutor to make improper remarks to the jury and to introduce improper evidence. This assignment of error is not well taken.

None of the instances of which Black complains were so egregious as to affect his substantial rights or to deny him a fair trial. Therefore, we will not reverse his conviction on the basis of prosecutorial misconduct. *See State v. Keenan*, 66 Ohio St.3d 402, 405, 613 N.E.2d 203 (1993); *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990); *Thomas* at ¶ 37-38. We overrule Black's second assignment of error.

In his third assignment of error, Black contends that he was denied the effective assistance of counsel. Black has not demonstrated that his counsel's representation fell below an objective standard of reasonableness or that, but for counsel's unprofessional errors, the results of the proceeding would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687-689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Thomas*, 1st Dist. Hamilton No. C-120561, 2013-Ohio-5386, at ¶ 50-52. We overrule Black's third assignment of error.

In his fourth assignment of error, Black contends that the evidence was insufficient to support his convictions. Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state proved beyond a reasonable doubt all of the elements of all of the counts of aggravated robbery, felonious assault, kidnapping, and failure to comply with the order or signal of a police officer. Therefore the evidence was sufficient to support the convictions. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *State v. Ojile*, 1st Dist. Hamilton Nos. C-110677 and C-100678, 2012-Ohio-6015, ¶ 48.

Black also contends that his convictions were against the manifest weight of the evidence. After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse Black's convictions

and order a new trial. Therefore the convictions were not against the manifest weight of the evidence. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Glenn*, 1st Dist. Hamilton No. C-030356, 2004-Ohio-1489, ¶ 32. We overrule Black's fourth assignment of error.

In his fifth assignment of error, Black contends that the trial court erred by improperly sentencing him. He argues that the felonious-assault, aggravated-robbery and kidnapping counts involving Shiferaw were allied offenses of similar import because they were all part of one continuous act, and that the stated relied on the same conduct to support all three convictions. We disagree.

The record shows that Black's restraint of Shiferaw was far more prolonged than necessary to complete the robbery. Shiferaw was also exposed to an increased risk of harm, and the harm he suffered was far more severe than necessary to complete the robbery. Black engaged in a course of conduct that resulted in the commission of three separate offenses, each committed with a separate animus. Therefore, those offenses were not allied offenses of similar import, and Black was properly convicted of all three. *See State v. Goshade*, 1st Dist. Hamilton No. C-120586, 2013-Ohio-4457, ¶ 21-27; *State v. Shears*, 1st Dist. Hamilton No. C-120212, 2013-Ohio-1196, ¶ 36-40; *State v. Whipple*, 1st Dist. Hamilton No. C-110184, 2012-Ohio-2938, ¶ 36-42; *State v. Shields*, 1st Dist. Hamilton No. C-100632, 2011-Ohio-1912, ¶ 14-20.

Black also argues that the two counts of felonious assault involving the two police officers were allied offenses of similar import because they were committed by one act, swerving the cab toward both officers, who happened to be near to each other. Again, we disagree. The record shows that a separate animus existed as to each victim. *See State v. Watkins*, 1st Dist. Hamilton No. C-120567, 2013-Ohio-4222, ¶ 10-16; *State v. Feller*, 2012-Ohio-6016, 985 N.E.2d 214, ¶ 32-36 (1st Dist.); Therefore, they were not

allied offenses of similar import. Black has failed to meet his burden to show that he was entitled to merger of the offenses under the allied-offense statute. *See Whipple* at ¶ 36.

Finally, Black argues that the trial court erred in sentencing him because it failed to consider the purposes and principles of sentencing before imposing the maximum prison term for all of the offenses. While a trial court is required to consider the purposes and principles of sentencing under R.C. 2929.11 and 2929.12, it need not make specific findings. We can presume from a silent record that the trial court considered the appropriate factors unless the defendant affirmatively shows that the court failed to do so. *State v. Bohannon*, 1st Dist. Hamilton No. C-130014, 2013-Ohio-5101, ¶ 7. Black has not done so. We cannot say that his sentence was clearly and convincingly contrary to law. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11-14 (1st Dist.). Consequently, we overrule his fifth assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HENDON, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on May 23, 2014

per order of the court _____.
Presiding Judge