

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

STATE OF OHIO	:	APPEAL NOS. C-140697
		C-140698
Plaintiff-Appellee,	:	C-140699
		C-140700
vs.	:	TRIAL NOS. C-14CRB-25850A
		C-14CRB-29163
DONALD MORRISON,	:	C-14CRB-29223A
		C-14CRB-29223D
Defendant-Appellant.	:	
		<i>JUDGMENT ENTRY.</i>
	:	

We consider these appeals 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.

Donald Morrison entered guilty pleas to one charge of resisting arrest and two charges of theft. In exchange, the state dismissed several charges. An additional charge of assault was tried to the bench, and Morrison was convicted. He now challenges his four convictions in these consolidated appeals.

Morrison's first assignment of error pertains to his convictions for resisting arrest and theft. He contends that the trial court erred by accepting his guilty pleas to the petty misdemeanor offenses without first advising him of the effect of a guilty plea, as required by Crim.R. 11. See *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, 877 N.E.2d 677.

Before accepting Morrison's guilty pleas to these offenses, the trial court was required to inform Morrison either orally or in writing of the language set forth in Crim.R.

11(B)(1) that a plea of guilty “is a complete admission of [his] guilt.” *See* Crim.R. 11(E); *Jones* at ¶ 51. Here the language of Crim.R. 11(B)(1) is missing from the record.

But the trial court’s failure to inform Morrison of the effect of his plea in these cases did not affect the validity of the plea unless Morrison suffered prejudice due to the court’s failure to provide the information. *See Jones* at ¶ 52. “The test for prejudice is ‘whether the plea would otherwise have been made.’” *Id.*, quoting *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

Morrison has not argued that he was prejudiced in this manner, nor does the record indicate that Morrison would not have entered the guilty pleas had the trial court properly informed him of the effect of his plea. Thus, we hold that, under the totality of the circumstances, Morrison was not prejudiced by the trial court’s failure to inform him of the effect of his pleas pursuant to Crim.R. 11(B)(1). Accordingly, we overrule the first assignment of error.

In his second assignment of error, Morrison argues that the trial court erred by denying his motion for a continuance of the trial on the assault charge. The trial court is vested with broad discretion to grant or deny a continuance, *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), syllabus, and we review its decision only for an abuse of that discretion. *Unger* at 67.

Although this was the first continuance that Morrison had requested with respect to the assault charge, he had not shown up for several court appearances before the same trial judge, and the reason given for the continuance—that the victim of the assault was also a “witness” on a burglary charge against Morrison that was pending before the grand jury—was not compelling. Additionally, considering the inconvenience to all involved and the other relevant factors, we cannot say that the trial court abused its broad discretion in

denying the requested continuance. *See id.* at 67-68. Thus, we overrule the second assignment of error.

In his third assignment of error, Morrison contends that his conviction for assault was not supported by sufficient evidence and was against the manifest weight of the evidence. We disagree.

At trial, Caroline Moore testified that Morrison, whom she had known for many years, bumped her with a metal grocery cart and then struck her in the head with a large umbrella, causing a cut that required five stitches. Although Morrison testified that he had struck Moore in self-defense, he also testified that Moore was alone at the time of the attack, a fact contradicted by Moore's testimony and the testimony of the responding police officer. And Morrison admitted that he had previously been convicted of crimes involving dishonesty.

In sum, we hold that the trial court had before it sufficient evidence on all the elements of the crime of assault. *See R.C. 2903.13; State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Further, we hold that there is no basis to conclude that the trial court lost its way or committed a manifest miscarriage of justice in resolving the factual issues against Morrison. *See State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). Accordingly, we overrule the third assignment of error.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., FISCHER and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on December 16, 2015
per order of the court _____.

Presiding Judge