

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

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| STATE OF OHIO, | : | APPEAL NO. C-170021 |
| Plaintiff-Appellee, | : | TRIAL NO. B-1600969 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| CHRISTIAN CLARK, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Christian Clark appeals his convictions for felonious assault with a firearm specification, kidnapping with a firearm specification, and having a weapon while under a disability. For the reasons that follow, we affirm the judgment of the trial court.

In his first assignment of error, Clark argues that the prosecutor committed numerous instances of misconduct. He asserts that the prosecutor asked leading questions of the state's witnesses, but he fails to identify or to analyze any specific questions asked or how they prejudiced him, as required by App.R. 16(A). Of the five pages he cites, three contain no leading questions. While the other two pages each arguably contain a leading question, they resulted in no prejudice.

Clark also asserts that the prosecutor improperly asked the victim to display her injuries and scars to the jury. However, serious physical harm was an element of the

felonious-assault offense under R.C. 2903.11(A)(1), and the kidnapping offense under R.C. 2905.01(A)(3), and the trial court did not abuse its discretion in allowing the display. *See State v. Bourdess*, 8th Dist. Cuyahoga No. 74842, 1999 WL 809810 (Oct. 7, 1999); *State v. Brown*, 9th Dist. Summit No. 16374, 1994 WL 68152 (Mar. 9, 1994); *State v. Small*, 10th Dist. Franklin No. 82AP-576, 1982 WL 4600 (Dec. 28, 1982).

Finally, Clark argues that the prosecutor made two improper remarks in closing argument. The prosecutor's comment that the victim had "probably heard that cruel swish sound" before being struck with a wire hanger was a reasonable inference from the evidence presented at trial. *See State v. Treesh*, 90 Ohio St.3d 460, 466, 739 N.E.2d 749 (2001). And the comment did not constitute plain error. *See State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶ 214. With respect to the prosecutor's second challenged remark, there was no reversible error because the trial court sustained a defense objection to the remark and instructed the jury that closing arguments were not evidence. Moreover, the evidence of Clark's guilt was overwhelming. *See State v. Pickens*, 141 Ohio St.3d 462, 2014-Ohio-5445, 25 N.E.3d 1023, ¶ 138. Therefore, we overrule the first assignment of error.

In his second assignment of error, Clark challenges the weight and sufficiency of the evidence supporting his convictions. The victim testified that Clark hogtied her and, over the course of an entire day, beat her in the face and body with guns, a wire hanger, a bottle, and his fists, causing serious injuries and disfigurement. Even after unbinding the victim's wrists, Clark restrained the victim's liberty over the next few days by tying her foot with a rope and by threatening to shoot her if she tried to escape. Clark admitted that he tied the victim up, beat her, and caused all of her injuries. He further admitted that he had not been relieved from a disability for a prior conviction of aggravated robbery, a felony offense of violence. The jury could have found all the essential elements of the offenses proven beyond a reasonable doubt. *See State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). After reviewing the

entire record, we cannot say that the jury lost its way and committed such a manifest miscarriage of justice that the convictions must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We overrule the second assignment of error.

In his third assignment of error, Clark argues that the trial court erred by failing to consider the statutory sentencing factors in R.C. 2929.11 and 2929.12, by imposing consecutive prison terms, and by imposing multiple sentences for allied offenses, specifically felonious assault and kidnapping with their respective firearm specifications. The record demonstrates that the trial court explicitly considered the sentencing factors in R.C. 2929.11 and 2929.12. *See State v. Corcoran*, 1st Dist. Hamilton No. C-160627, 2017-Ohio-7084, ¶ 23. In addition, the court made the required consecutive-sentencing findings under R.C. 2929.14(C) on the record at the sentencing hearing and in the sentencing entry. *See State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

With respect to allied offenses, Clark was convicted of felonious assault under R.C. 2903.11(A)(2) for causing physical harm to the victim by means of a deadly weapon. He was convicted of kidnapping under R.C. 2905.01(A)(3) for restraining the victim's liberty by force, threat, or deception, for the purpose of terrorizing or inflicting serious physical harm on the victim.

This court has recognized that in some circumstances, kidnapping will merge with another offense. *See State v. Anderson*, 2012-Ohio-3347, 974 N.E.2d 1236, ¶ 31 (1st Dist.) (kidnapping offense merged with an aggravated-robbery offense where it was neither committed separately nor with a separate animus). However, we have held that a kidnapping offense is committed with a separate animus and will not merge with another offense where the restraint of the victim is prolonged, the confinement is secretive, or the movement of the victim is substantial. *See State v. Morris*, 1st Dist. Hamilton No. C-150421, 2016-Ohio-5490, ¶ 17, citing *State v. Logan*, 60 Ohio St.2d

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126, 135, 397 N.E.2d 1345 (1979), and *State v. Grant*, 1st Dist. Hamilton No. C-971001 (March 23, 2001); *see also State v. Houston*, 1st Dist. Hamilton No. C-130429, 2014-Ohio-3111, ¶ 23.

In this case, Clark kept the victim hogtied for a day, and then tied her foot to his foot, and, thereafter for several days, threatened to shoot her if she tried to leave, which demonstrated a separate animus for the kidnapping offense. Therefore, the trial court did not err when it failed to merge the felonious-assault and kidnapping offenses, or their respective specifications. We overrule the third assignment of error and affirm the judgment of the trial court.

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.

MOCK, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on December 1, 2017

per order of the court _____.
Presiding Judge