

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DUSTIN LEE JAMES,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0005

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2022 CR 84

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Judges, and William A. Klatt, Judge of the
Tenth District Court of Appeals, Sitting by Assignment (Retired).

JUDGMENT:

Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*,
Assistant Prosecutor, for Plaintiff-Appellee

Atty. Michael A. Partlow, for Defendant-Appellant

Dated: March 21, 2024

WAITE, J.

{¶1} Appellant Dustin Lee James appeals his convictions and sentence for felonious assault, assault, resisting arrest, and obstructing official business and raises three arguments on appeal. He contends that the state should not have been permitted to use a peremptory challenge against a black juror based on *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). As Appellant’s *Batson* objection did not constitute a prima facie case of purposeful discrimination and the state also provided an adequate race-neutral explanation of the peremptory challenge, Appellant’s first assignment of error is not well-taken. Appellant also argues that his convictions are against the manifest weight of the evidence. This record fully supports each of the charges. Finally, Appellant complains that his indefinite sentence, based on changes to the sentencing laws enacted as part of the Reagan Tokes Act, was unconstitutional. The Ohio Supreme Court has recently affirmed the constitutionality of the Reagan Tokes Act and this assignment also fails. As all three assignments of error are without merit, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} EMT Paramedic Erin O’Driscoll was called to the Walmart department store in Boardman at 4:30 p.m. on December 24, 2021 for a suspected drug overdose. Police and fire units were already on the scene. O’Driscoll found Appellant in the parking lot. Appellant consented to be examined but stated that he did not want to go to the hospital. He was acting erratically, kept nodding off, and showed other signs of an overdose. After he was placed in an ambulance, Appellant almost immediately stopped breathing. O’Driscoll administered Narcan via a syringe to combat the suspected overdose. These

events occurred within a minute or two of the ambulance beginning its exit through the Walmart parking lot towards South Avenue and the hospital.

{¶3} Appellant immediately woke up on receiving the injection. He grabbed the syringe from O'Driscoll and attacked her, prompting the ambulance driver, EMT Angelina Williams, to pull over, radio for help, and enter the back of the ambulance to assist O'Driscoll. Multiple police officers responded. Eventually, the two EMTs and three police officers were able to restrain Appellant. As a result of the altercation, O'Driscoll suffered a shoulder sprain and soreness in her hands and Williams suffered a concussion. Officer Glenn Patton was hit in the face and suffered a split lip.

{¶4} Appellant was indicted on seven counts: two counts of felonious assault pursuant to R.C. 2903.11, second degree felonies; three counts of assault pursuant to R.C. 2903.13, fourth degree felonies; one count of obstruction of official business under R.C. 2921.31, a fifth degree felony; one count of resisting arrest, a second degree misdemeanor pursuant to R.C. 2921.33.

{¶5} Jury trial took place on January 3, 2023. During the jury voir dire, the prosecutor used a peremptory challenge to excuse Juror No. 12, who was black. Appellant objected to the exclusion on *Batson* grounds. A discussion ensued which revealed that Juror No. 12 was not the only black panelist on the jury and the next juror, who would replace Juror No. 12, was also black. The prosecutor also gave a race-neutral reason for excluding the juror. The court overruled Appellant's *Batson* challenge.

{¶6} During trial, O'Driscoll testified about her qualifications as an EMT paramedic. She described four levels of EMT training: emergency responder, EMT basic, EMT intermediate, and EMT paramedic, which is the highest level of training. She

testified that as an EMT paramedic, she was qualified to administer medications, including by use of a syringe. She testified about the use of Narcan in drug overdose cases, and the many ways it can be administered. She testified as to her training to administer Narcan in the safest way, and why an intramuscular injection is often the best way to administer the drug.

{¶7} When O'Driscoll arrived at the scene along with her partner Angelina Williams, O'Driscoll had a brief conversation with the police on the scene and then went immediately to Appellant, who was conscious at the time. She testified that a person can be conscious during the early stages of overdosing, and the fact that Appellant could talk to her did not exclude the possibility that he had overdosed. She described his behavior as erratic and argumentative. Appellant said he did not know why paramedics were called, but also stated that his girlfriend thought he was overdosing. O'Driscoll noticed signs of opiate use, including pin-point pupils, and asked Appellant a number of questions to determine whether he maintained basic cognitive function.

{¶8} Appellant stated he did not want to go to the hospital. He threatened to hurt her if she administered Narcan. (1/3/23 Tr., p. 189.) O'Driscoll responded by telling Appellant that she would have to do a full "work-up" on him before she would allow him to sign a refusal form. (1/3/23 Tr., p. 157.) This would include taking his blood pressure, checking his heart rate, getting his blood sugar level, and checking other vital signs. O'Driscoll's goal was to determine that he was not under the influence of drugs or in the early stages of an overdose. She testified that she was not permitted to withhold treatment or let him die simply because he verbally refused to go to the hospital. She told

him that if he stayed awake, she would not give him Narcan, but if he fell asleep she would have to administer the drug.

{¶9} O'Driscoll testified that, although initially reluctant, Appellant "agrees to get up" and sit on the bench seat in the ambulance. (1/3/23 Tr., p. 159.) O'Driscoll and Williams started to hook Appellant up to a heart monitor to get his vital signs, when he started "nodding off." (1/3/23 Tr., p. 160.) This was in sharp contrast to his behavior before he entered the ambulance. He nodded off three or four times. This indicated to O'Driscoll that Appellant was in an overdose, and she believed that he would shortly become unresponsive and stop breathing. (1/3/23 Tr., p. 160.) While Appellant had earlier stated that he was not overdosing, O'Driscoll testified that it is common for people who are using drugs or overdosing to deny they have used drugs. She conferred with the police on the scene before deciding whether to "pink slip" Appellant, meaning that he would be held at a hospital to make sure he was responsive and kept breathing. At this point, O'Driscoll simply intended to take Appellant to a hospital. She did not intend at that point to administer Narcan, which would only be necessary if he became unresponsive and stopped breathing.

{¶10} As the ambulance began moving out of the parking lot bound for the hospital, Appellant was moved from the bench to the cot. O'Driscoll rode in the back with Appellant and Williams drove the ambulance. O'Driscoll testified that Appellant stopped arguing with her about going to the hospital and his head slumped over. She noticed that all his vital signs began dropping and he went limp. He failed to respond to O'Driscoll's questions and became completely unresponsive. At this point, she made the decision to administer an injection of Narcan. (1/3/23 Tr., p. 171.) She stated that the injection

method works faster than nasal spray, but slower than using an IV. (1/3/23 Tr., p. 171.) She injected two milligrams of Narcan into Appellant's left thigh. After she took the needle out, but before she could put the safety cap back on the syringe, Appellant suddenly became alert and enraged, and began physically fighting with her. He forcibly took the syringe from her hand. (1/3/23 Tr., p. 179.)

{¶11} She tried to hold onto his hand to avoid getting stabbed with the needle when she realized her head and neck were completely exposed to his stabbing motions. This struggle went on for a few minutes before O'Driscoll was able to call for help from Williams, who then put out a radio call for aid, turned on the emergency signals of the ambulance, pulled over to the side of the road, and ran around to get into the back of the ambulance. Sergeant Glenn Patton of the Boardman Police Department was nearby and ran on foot across the Giant Eagle parking lot to assist. Other officers and paramedics from other EMT units also arrived.

{¶12} O'Driscoll testified that at one point Appellant hid the syringe behind his back while he was fighting with the EMTs. She was very afraid of his retention of the syringe due to the risk of serious injury if she were stabbed in the face, or was exposed to Appellant's blood that was on the needle. She even risked death if the syringe chamber had air in it and Appellant managed to stab her. The air could enter the heart, causing immediate death. Ultimately, she suffered a sprained shoulder and a sore hand from her struggle with Appellant in the ambulance.

{¶13} EMT Angelina Williams, the ambulance driver, testified that she saw Appellant attempting to stab O'Driscoll with the syringe. Appellant also attempted to stab

Williams herself, who was eventually able to remove the syringe from Appellant's hand. Williams was struck in the head during the fracas, resulting in a concussion.

{¶14} Officer Patton was the first police officer to respond to the call from the ambulance driver. He opened the back doors and saw O'Driscoll and Williams struggling with Appellant. He climbed into the ambulance, identified himself as a police officer, told Appellant to stop fighting, and attempted to restrain him. Appellant punched Patton in the chin, resulting in a split lip. Additional officers and EMT personnel arrived, and together they were finally able to restrain Appellant.

{¶15} The jury found Appellant guilty of six of the seven counts, only deciding against conviction on one count of second degree felony felonious assault against Angelina Williams. The court's judgment entry confirming the jury verdict was filed on January 10, 2023. Appellant filed a premature notice of appeal on January 17, 2023.

{¶16} Sentencing occurred on March 2, 2023. The court sentenced Appellant to a prison term of eight to twelve years, with the sentences for all six convictions to run concurrently.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN PERMITTING APPELLEE TO STRIKE
THE ONLY BLACK JUROR ON THE PANEL.

{¶17} Appellant contends that the state violated his right to equal protection by using a peremptory challenge to remove a black juror from the jury. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits purposeful discrimination in the form of a prosecutor's use of a peremptory challenge to

excuse a prospective juror based on his or her race or gender. Appellant objected to the removal of the juror based on *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). *Batson* held that the state denies a black defendant equal protection when it puts him on trial before a jury from which members of his race have been purposely excluded. *Id.* at 85. Although Appellant is white, *Powers v. Ohio*, 499 U.S. 400, 415, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), extended the *Batson* rule to apply to a white defendant challenging the removal of a black juror. *Batson* set forth a procedure for determining whether a peremptory challenge is used in a discriminatory manner:

“A court adjudicates a *Batson* claim in three steps.” *State v. Murphy* (2001), 91 Ohio St.3d 516, 528, 747 N.E.2d 765. First, the opponent of the peremptory challenge must make a prima facie case of racial discrimination. Second, if the trial court finds this requirement fulfilled, the proponent of the challenge must provide a racially neutral explanation for the challenge. *Batson*, 476 U.S. at 96–98, 106 S.Ct. 1712, 90 L.Ed.2d 69. However, the “explanation need not rise to the level justifying exercise of a challenge for cause.” *Id.* at 97, 106 S.Ct. 1712, 90 L.Ed.2d 69. Finally, the trial court must decide based on all the circumstances, whether the opponent has proved purposeful racial discrimination. *Id.* at 98, 106 S.Ct. 1712, 90 L.Ed.2d 69. See, also, *Purkett v. Elem* (1995), 514 U.S. 765, 767-768, 115 S.Ct. 1769, 131 L.Ed.2d 834. A trial court's findings of no discriminatory intent will not be reversed on appeal unless clearly erroneous. *State v. Hernandez* (1992), 63 Ohio St.3d 577, 583, 589 N.E.2d 1310, following

Hernandez v. New York (1991), 500 U.S. 352, 111 S.Ct. 1859, 114 L.Ed.2d 395.

State v. Bryan, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 106.

{¶18} Appellee responds that Appellant failed to raise a prima facie case of purposeful discrimination. “To make a prima facie case of such purposeful discrimination, an accused must demonstrate: (a) that members of a recognized racial group were peremptorily challenged; and (b) that the ‘ “facts and any other relevant circumstances raise an inference that the prosecutor” ‘ used the peremptory challenges to exclude jurors ‘ “on account of their race.” ’ *State v. Hill*, 73 Ohio St.3d 433, 444-45, 653 N.E.2d 271 (1995), quoting *State v. Hernandez*, 63 Ohio St.3d 577, 582, 589 N.E.2d 1310 (1992).

{¶19} If the defendant establishes a prima facie case of purposeful discrimination, the burden shifts to the state to provide a race-neutral explanation for the peremptory challenge. *Batson* at 94, 106 S.Ct. 1712.

{¶20} Appellee cites the recent case of *State v. Stalder*, 173 Ohio St.3d 203, 2023-Ohio-2359, for the proposition that a defendant who wishes to make a *Batson* challenge of purposeful discrimination must allege that two or more members of a cognizable group were peremptorily challenged. However, this is not an accurate reading of *Stalder*. In *Stalder*, the defendant, a male, objected to the state using a peremptory challenge against a male juror. The defendant contended the state was excluding male jurors because they would tend to sympathize with the defendant. The challenge was based on *Batson*’s prohibition of excluding jurors simply on the basis of their race, and *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994), which applied *Batson* to gender discrimination.

{¶21} The trial court determined that *Batson* did not apply and that the state was not required to give a gender-neutral reason for excluding the juror. The state then used another peremptory challenge to exclude another male juror. The defendant renewed his *Batson* objection. The court did not require the state to provide a gender-neutral reason for the second challenge, but the prosecutor voluntarily provided one. The court allowed both jurors to be excused. The final jury consisted of five females and three males. One alternate was male. Stalder was convicted of sexual imposition.

{¶22} The Fifth District Court of Appeals reversed, holding that Stalder had established a prima facie case of purposeful gender discrimination. *State v. Stalder*, 5th Dist. Fairfield No. 21-CA-26, 2022-Ohio-1386. The Ohio Supreme Court, though, disagreed with the Fifth District and held “that when a party objecting to a peremptory challenge offers a bare allegation of gender discrimination without offering any other relevant facts and circumstances to support an inference of gender discrimination, that party fails to establish a prima facie case of purposeful gender discrimination.” *Id.*, at ¶ 5. The Court reiterated its prior holding that the defendant must demonstrate “that the facts and any other relevant circumstances raise an inference that the prosecutor used the peremptory challenges to exclude jurors on account of their race.” *State v. Johnson*, 88 Ohio St.3d 95, 116, 723 N.E.2d 1054, 1073 (2000).

{¶23} The *Stalder* Court elaborated as to what “facts and other relevant circumstances” might look like. It explained:

[D]efendants may * * * present statistical evidence about the prosecutor's use of peremptory challenges, side-by-side comparisons of prospective jurors who were struck from the jury and of those who were not, any

misrepresentations of the record by the prosecutor when defending the peremptory challenges, and historical evidence of the state's use of peremptory challenges in past cases. Additionally, when a prosecutor does not exercise all of his or her peremptory challenges and there are still members of the cognizable gender group on the jury, that is a factor that tends to refute a claim of purposeful discrimination. (Citations omitted.)

Id., at ¶ 17.

{¶24} It is immediately apparent that a successful *Batson* challenge can be made following a single peremptory challenge. “The Constitution forbids striking even a single prospective juror for a discriminatory purpose.” *Flowers v. Mississippi*, 139 S.Ct. 2228, 2244, 204 L.Ed.2d 638 (2019). If the prosecutor stated on the record he was going to exclude black jurors, and then used a peremptory challenge to do so, that would satisfy the *Batson* prima facie test for even a single peremptory challenge. Likewise, if the defendant was able to show a pattern on the part of the prosecutor of excluding black jurors based on prior cases, statistical analysis, contradictions in the record, or even comparing the treatment of the excluded juror versus the jurors who were not challenged, that could satisfy the *Batson* prima facie test when only a single juror was excluded.

{¶25} Even though Appellant is correct that he is permitted to raise a *Batson* challenge based on the exclusion of a single juror, he nonetheless failed to satisfy the prima facie test for purposeful discrimination on the broader grounds set forth in *Stalder*. The record does not indicate with certainty how many jurors on the final panel were black or that Juror No. 12, who was excluded, was the only black panelist. Appellant argues that it is obvious from the record that Juror No. 12 was the only potential black member

of the jury, but the prosecutor stated at trial, immediately after Appellant’s counsel raised the *Batson* challenge, that “I also don’t believe that [Juror No. 12] is the only juror of African descent.” (1/3/23 Tr., p. 99.) The prosecutor also stated that the juror who would replace Juror No. 12 was also black. A discussion then took place about other black members of the jury, and the court overruled Appellant’s *Batson* challenge. (1/3/23 Tr., p. 100.) The record, then, does not support Appellant’s contention that there were no other black panelists on the jury. Therefore, his allegation cannot support a prima facie case of discrimination.

{¶26} Appellant did not raise any other basis for his *Batson* challenge. Although the prima facie test is not burdensome, it does require the defendant to point to something in the record of the case at hand, other than the mere fact that a peremptory challenge is being used against a black prospective juror, to indicate that discrimination is taking place. This is particularly true when only one juror from a protected class has been excluded, and when the record does not show a pattern or provide any other indication of exclusion based on race. Appellant’s failure to raise a prima facie case of purposeful discrimination defeats this assignment of error.

{¶27} Assuming *arguendo* Appellant had met the threshold requirement, the prosecutor provided a race-neutral explanation for excluding Juror No. 12. “A race-neutral explanation for a peremptory challenge is simply ‘an explanation based on something other than the race of the juror.’ [*Hernandez v. New York*, 500 U.S. 352, 360, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991)]. ‘Unless a discriminatory intent is inherent in the prosecutor’s explanation, the reason offered will be deemed race neutral.’ *Id.*” *State v. Mitchell*, 2016-Ohio-1439, 62 N.E.3d 820, ¶ 19 (7th Dist.). The prosecutor explained

that Juror No. 12 did not personally respond to any questions during voir dire, and therefore, he could not evaluate Juror No. 12 in any fashion. The trial transcript bears this out. Juror No. 12 had as much opportunity as any other juror to respond to the general questioning of both attorneys and the trial judge. There is no record of any response or statement made by Juror No. 12 during voir dire. Lack of response led to the peremptory challenge. The trial court accepted this explanation as race-neutral, and Appellant has not cited to anything in the record that contradicts this conclusion.

{¶28} The record does not support Appellant's argument that he raised a prima facie case of purposeful discrimination in the peremptory challenge to Juror No. 12. He also does not show that the prosecutor's explanation for the challenge had discriminatory intent. Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

APPELLANT'S CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶29} Appellant challenges his conviction as being against the manifest weight of the evidence.

{¶30} Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." (Emphasis deleted.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). It is not a question of mathematics, but depends on the effect of the evidence in inducing belief. *Id.* Weight of the evidence involves the state's burden of persuasion. *Id.* at 390 (Cook, J. concurring). The appellate court reviews the entire record, weighs the evidence

and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins*, at 387. This discretionary power of the appellate court to reverse a conviction is to be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id.*

{¶31} "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 39 O.O.2d 366, 227 N.E.2d, 212 (1967), paragraph one of the syllabus. "The trier of fact is in the best position to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice inflections, and demeanor." *State v. Vaughn*, 2022-Ohio-3615, 197 N.E.3d 644, ¶ 16 (7th Dist.), citing *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶32} To reverse a jury verdict as against the manifest weight of the evidence, a unanimous concurrence of all three appellate judges is required. *Thompkins* at 389; Section 3(B)(3), Article IV of the Ohio Constitution.

{¶33} Appellant does not specify which conviction is unsupported by the manifest weight of the evidence. He does not set forth which element of which crime is not found in the record. Appellant claims that the overall verdict is against the manifest weight because it is not clear what drugs Appellant may have ingested to cause his apparent overdose; because he had refused hospitalization and treatment; and because Appellant

behaved as any normal person would if injected in the leg with a hypodermic needle while in the back of an ambulance.

{¶34} Appellant claims that it was he who was the victim of an assault, instead of its perpetrator. At oral argument Appellant raised the prospect that his actions in the ambulance constituted the affirmative defense of self-defense. "An affirmative defense must be raised at the trial court level or it is waived[.]" *State v. Robertson*, 7th Dist. Jefferson No. 97 JE 41, 1999 WL 1243311, *1. As this argument has not been briefed it has been waived.

{¶35} Assault requires proof that a person knowingly caused or attempted to cause physical harm to another. The evidence showed that Appellant caused physical harm to Erin O'Driscoll, Angelina Williams, and Officer Glenn Patton. All three testified about their injuries, including a sprained shoulder, a concussion, and a split lip.

{¶36} Felonious assault also requires proof that a deadly weapon was used. The state provided evidence that a syringe can be a deadly weapon, particularly if there is air in the chamber of the syringe and the air is injected into the victim. The syringe could also be deadly depending on where the needle strikes the victim, or if the needle is contaminated with a deadly substance. O'Driscoll testified extensively about Appellant forcibly taking her Narcan syringe, attempting to stab her with it, and hiding it behind his back to keep it from her.

{¶37} Resisting arrest requires proof that the defendant, recklessly or by force, resisted in the lawful arrest of the defendant or another. The record reveals that Officer Patton entered the ambulance, saw Appellant attacking O'Driscoll and Williams, and told him to stop, but that Appellant fought with Patton, resulting in an injury to Patton's face.

Appellant does not explain how this evidence fails to support a conviction for resisting arrest.

{¶38} Obstruction of official business requires proof of some action taken by the defendant to hamper or impede a public official in the performance of their duties. Once again, the record shows that Appellant fought with Officer Patton and two other police officers as they tried to stop Appellant from assaulting O'Driscoll and Williams. Patton told Appellant to stop fighting. Appellant persisted, injured three persons in the process, and eventually was subdued through the efforts of O'Driscoll, Williams, and the three officers.

{¶39} It is difficult to know what aspects of the record Appellant believes do not support the convictions, since he makes no specific arguments as to any particular count. Appellant cannot rely on this Court or Appellee to make his argument for him. *Midkiff v. Kuzniak*, 7th Dist. Mahoning No. 06 MA 66, 2006-Ohio-6243, ¶ 7. Without any elucidation from Appellant, it is clear the record supports that assault, felonious assault, resisting arrest, and obstruction of official business were proven beyond a reasonable doubt. This is not a case based primarily on circumstantial evidence. The three victims of the crimes all testified at trial, and video evidence of the incident was presented to support their testimony.

{¶40} Appellant's second assignment of error is not supported by the record and is overruled.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED, AS A MATTER OF LAW, AND IN VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS, BY SENTENCING APPELLANT TO A POTENTIAL INDEFINITE TERM OF INCARCERATION.

{¶41} Appellant raises three reasons why the indefinite portion of his sentence is unconstitutional. First, Appellant argues that the right to a trial by jury is protected by the Sixth Amendment of the United States Constitution, and Article I, Section 5 of the Ohio Constitution. Appellant contends that the Reagan Tokes amendment to Ohio's felony sentencing laws allows for an indefinite sentence that relies on judicial factfinding that goes beyond the facts that could be found by a jury. Appellant does not cite any caselaw or other support for this proposition.

{¶42} Appellant argues that the Reagan Tokes Act violates the principle of separation of powers. Appellant again presents no caselaw or other argument in favor of this viewpoint.

{¶43} Appellant argues that the Reagan Tokes Act violates due process in three different ways. Once again, Appellant does not cite any caselaw or raise any argument to support this proposition.

{¶44} The Ohio Supreme Court has recently affirmed the constitutionality of the Reagan Tokes Act regarding the right to trial by jury, separation of powers, and due process. *State v. Hacker*, 173 Ohio St.3d 219, 2023-Ohio-2535. This Court has cited *Hacker* in affirming that the Reagan Tokes Act does not violate the right to jury trial, the

separation of powers doctrine, or due process. *State v. Baker*, 7th Dist. Columbiana No. 22 CO 0033, 2023-Ohio-2747, ¶ 21. It appears that Appellant set forth this assignment of error only to preserve these issues for review while *Hacker* was pending before the Ohio Supreme Court. The *Hacker* opinion has since been released and all of Appellant's stated issues with the Reagan Tokes Act have been resolved against him. , Appellant's third assignment of error is overruled.

Conclusion

{¶45} Appellant appeals his convictions and sentence for felonious assault, assault, resisting arrest, and obstructing official business. He raises three assignments of error on appeal. His first, based on a *Batson* objection made during trial, is not supported by the record. There is no evidence that the state had a discriminatory purpose in removing the juror from the panel. Second, Appellant's manifest weight argument is contradicted by the extensive evidence presented against him at trial, including testimony of the two medical technicians and Officer Patton, as well as the video evidence of what occurred when Appellant attacked them in the back of an ambulance. Third, Appellant's argument that the Reagan Tokes Act is unconstitutional is defeated by the holdings in the recent case of *State v. Hacker*, 173 Ohio St.3d 219, 2023-Ohio-2535. All three assignments of error are without merit, and the conviction and sentence are affirmed.

Robb, P.J. concurs.

Klatt, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.