

[Cite as *State v. Ladson*, 2018-Ohio-1299.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105914

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SHAWN A. LADSON**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-15-601492-C

**BEFORE:** Boyle, P.J., S. Gallagher, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** April 5, 2018

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Shawn Ladson, appeals his convictions and sentence.

He raises the following assignments of error for our review:

1. The manifest weight of the evidence did not support conviction.
2. The trial court erred in failing to declare a mistrial on the state's comment that infringed on Appellant's constitutional right to remain silent at trial.
3. The trial court committed plain error in failing to merge underlying offenses as part of the same act with the same animus; and failing to merge firearm specifications as part of the same criminal transaction.

{¶2} Finding no merit to his assignments of error, we affirm.

### **I. Procedural History and Factual Background**

{¶3} In December 2015, a Cuyahoga County Grand Jury indicted Ladson and his two codefendants, Michael Townsend, Jr. and Roscoe Simmons III, for two counts of aggravated murder, in violation of R.C. 2903.01(A) and (B); one count of murder, in violation of R.C. 2903.02(B); two counts of aggravated burglary, in violation of R.C. 2911.11(A)(1) and (2); three counts of aggravated robbery, in violation of R.C. 2911.01(A)(1) and (3); four counts of felonious assault, in violation of R.C. 2903.11(A)(1) and (2); five counts of kidnapping, in violation of R.C. 2905.01(A)(3); and one count of tampering with evidence, in violation of R.C. 2921.12(A)(1). Ladson was indicted for an additional count of having weapons while under disability, in violation of R.C. 2923.13(A)(3). With the exception of the count for tampering with evidence, all of the counts carried one- and three-year firearm specifications. Additionally, the counts

for aggravated burglary, aggravated robbery, felonious assault, and kidnapping carried notices of prior conviction and repeat violent offender specifications. The charges arose out of the fatal shooting of Joshua Freeman, which occurred when three men broke into Freeman's apartment on July 21, 2015.

{¶4} Ladson waived his right to a trial by jury for the notice of prior conviction and repeat violent offender specifications as well as for the having weapons while under disability count. The case proceeded to a jury trial, where the state presented 13 witnesses, including 5 eyewitnesses, each of who offered slightly varied accounts as to who shot Freeman. We summarize the following pertinent facts from the evidence presented at trial.<sup>1</sup>

{¶5} On July 19, 2015, Freeman and Darren Briscoe attended a car show with some friends. Freeman recently had come into a large sum of cash and, earlier that day, had posted a video on Instagram of himself with the cash. Briscoe testified that he was not sure of the amount of the money or exactly how Freeman got the money, but believed it was related to an insurance settlement.

{¶6} At the car show, Freeman gambled and ultimately lost all of his money. As a result, Freeman and Briscoe decided to leave the car show around 7:30 p.m. and went back to the two-bedroom apartment they shared on Wheelock Avenue in Cleveland. Latia Stradford, Briscoe's girlfriend, met the men at their apartment, and she and Briscoe

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<sup>1</sup> Townsend and Simmons reached plea deals with the state in exchange for their testimony against Ladson at trial.

eventually went to his room and fell asleep. Lateasa Byrd, Freeman's girlfriend and mother of his child, also came over to the apartment with their daughter and spent the night.

{¶7} Around 2:00 a.m., Byrd and Freeman awoke to the sound of commotion coming from inside the apartment. When Freeman opened the bedroom door to investigate the noise, a man stood in the doorway pointing a gun at Freeman. The man, who was eventually identified as Townsend, entered the room. Townsend began arguing with Freeman and demanded to know where the cash was that Freeman showed on Instagram earlier in the day. After Freeman denied having the money, Townsend threatened to kill the couple's daughter if Freeman did not give him the money.

{¶8} At the same time, both Briscoe and Stradford, who were asleep in the other bedroom, woke up when two men kicked in Briscoe's bedroom door and ordered Briscoe to get on the ground. The men demanded to know where the money was and threatened him with a gun and a crowbar. At one point, one of the men reached over and grabbed two of Briscoe's designer belts, which Briscoe estimated to be worth over a few hundred dollars a piece. After Briscoe told the men that there was no money in the apartment, both left the bedroom for a moment. One of the men then returned and ordered Briscoe to crawl to Freeman's bedroom.

{¶9} When the two men and Briscoe entered Freeman's bedroom, the men continued threatening Freeman. At some point during the argument, one of the men shot Freeman. After the shot went off, all three men ran from the apartment.

{¶10} Byrd immediately called 911, while Briscoe attempted to help Freeman. Soon after, police arrived on the scene. Upon arrival, officers secured the area and began interviewing Briscoe and Stradford. Paramedics tended to Freeman and took him to Metro Hospital. Byrd accompanied Freeman to the hospital and was interviewed by police there. Freeman eventually died of a single gunshot wound to his lower abdomen after suffering extreme blood loss and organ failure.

{¶11} Police collected evidence, swabbing doorknobs and other objects in the apartment for DNA, taking pictures of the apartment, both inside and outside, and collecting evidence, such as a single cartridge case and bloodied clothing from Freeman's bedroom. Police also took pictures of the damage to the apartment's outside door, which showed signs of a forcible entry.

{¶12} Later that day, police interviewed Briscoe and Stradford again at police headquarters, who described the events of that night as well as the men who entered the apartment. Based on that information, police obtained a warrant for Townsend.

{¶13} On the evening of July 20, 2015, Roscoe Simmons turned himself into police, confessing that he was one of the men who broke into Freeman's apartment. The next day, Townsend also turned himself into police. During their initial interviews with police, neither Townsend nor Simmons identified the third suspect.

{¶14} Police eventually received information identifying Ladson as the third suspect and obtained a warrant for him on July 29, 2015. Ladson, however, was not apprehended and arrested until November 20, 2015.

{¶15} After the state rested its case, Ladson moved for a Crim.R. 29 dismissal, which the court denied. The defense then presented no witnesses and rested its case. Ladson renewed his Crim.R. 29 motion, which the court denied. Ladson additionally moved for a mistrial based on comments made during the state's closing argument, but the court denied the motion.

{¶16} On April 28, 2017, the jury found Ladson guilty of one count of aggravated murder; one count of murder; two counts of aggravated burglary; three counts of aggravated robbery; five counts of kidnapping, all of which carried one- and three-year firearm specifications. The court found Ladson guilty of the notice of prior conviction and repeat violent offender specifications for the counts of aggravated burglary, aggravated robbery, and kidnapping. Additionally, the jury found Ladson guilty of one count of tampering with evidence.

{¶17} At sentencing, the trial court found that the aggravated murder count merged with the counts for murder and one count for kidnapping; the counts for aggravated burglary merged; and the remaining four counts for kidnapping merged with the aggravated robbery counts. The state elected to sentence Ladson for the count for aggravated murder and aggravated burglary and two counts of aggravated robbery.

{¶18} The trial court sentenced Ladson as follows: 25 years to life for aggravated murder with one- and three-year firearm specifications from the merged count for murder; 11 years for aggravated burglary with one- and three-year firearm specifications; and 11 years for the aggravated-robbery counts with one- and three-year firearm specifications.

The court ordered that the sentences run concurrent to one another for a total of 25 years to life.

{¶19} Additionally, the court ordered that the firearm specifications for the murder count and one of the aggravated burglary counts to run consecutively to one another, but concurrent to the remaining specifications from the aggravated burglary count and the remaining aggravated robbery count, resulting in a six-year term for the firearm specifications, which was to be served prior and consecutive to Ladson's remaining sentences. As a result, Ladson received a total sentence of 31 years to life.

{¶20} It is from this judgment and sentence that Ladson now appeals.

## **II. Law and Analysis**

### **A. Manifest Weight of the Evidence**

{¶21} In his first assignment of error, Ladson argues that his convictions were against the manifest weight of the evidence, specifically challenging the credibility of eyewitness testimony presented.

{¶22} Unlike sufficiency of the evidence, a challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence, but nevertheless conclude that the judgment is against the weight of the evidence. *Id.*, citing *State v. Robinson*, 162 Ohio St. 486, 124 N.E.2d 148 (1955).

{¶23} When reviewing a manifest weight challenge, an appellate court sits as the



“thirteenth juror” and

review[s] the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts in evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed[.]

*Id.*; *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶24} Further, we must be mindful that questions of weight and credibility are primarily for the trier of fact to determine. *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). This is because “[t]he demeanor of witnesses, the manner of their responses, and many other factors observable by a jury \* \* \* simply are not available to an appellate court on review.” *State v. Bailey*, 8th Dist. Cuyahoga No. 97754, 2012-Ohio-3955, ¶ 11, quoting *State v. Bierbaum*, 3d Dist. Seneca No. 13-88-18, 1990 Ohio App. LEXIS 1204 (Mar. 4, 1990). “[W]hen considering a manifest weight challenge, the trier of fact is in the best position to take into account inconsistencies, along with the witnesses’ manner, demeanor, gestures, and voice inflections, in determining whether the proffered testimony is credible.” *State v. McNamara*, 8th Dist. Cuyahoga No. 104168, 2016-Ohio-8050, ¶ 36, citing *State v. Kurtz*, 8th Dist. Cuyahoga No. 99103, 2013-Ohio-2999. “The jury may take note of any inconsistencies and resolve them accordingly, ‘believing all, part, or none of a witness’s testimony.’” *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 33, quoting *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958. “Therefore, we afford great deference to the factfinder’s determination of witness credibility.” *Id.* Accordingly, reversing a

previous conviction and ordering a new trial under a manifest weight of the evidence claim should be saved for the “exceptional case in which the evidence weighs heavily against the conviction.” *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, ¶ 67, citing *Thompkins*.

{¶25} Upon review of the record, we recognize that there were inconsistencies in the testimony provided by Townsend and Simmons. It is clear from the record that Townsend and Simmons lied to police about the identity of the third suspect. In addition to those lies, Simmons admitted that he failed to identify Ladson in a photo array at the police station. Townsend and Simmons also made a number of inconsistent statements at trial, concerning whether there was a plan before entering the apartment and whether Ladson physically assaulted Freeman before shooting him.

{¶26} While Ladson correctly points to Townsend’s and Simmons’s initial interviews with police where they could or did not identify the third suspect as well as the potential motives that both Townsend and Simmons would have to testify against Ladson, there was also evidence suggesting that they were both credible. Simmons testified that he did not have any felony convictions prior to the pertinent events and that, after talking to his brother who is a corrections officer at county jail, he decided to turn himself in. Additionally, under their plea deals, Townsend would still have to serve a minimum of 18 years, and Simmons would have to serve a minimum of 15 years.

{¶27} Further, the jury was free to find both of them to be credible. *See State v. Taylor*, 10th Dist. Franklin No. 12AP-870, 2013-Ohio-3699, ¶ 47, quoting *State v.*

*Humberto*, 196 Ohio App.3d 230, 2011-Ohio-3080, 963 N.E.2d 162 (10th Dist.) (“[E]ven where discrepancies exist, eyewitness identification testimony alone is sufficient to support a conviction so long as a reasonable juror could find the eyewitness testimony to be credible.”). In fact, Ladson’s argument ignores the very function of the jury, which is to resolve conflicts in the evidence. Considering Townsend’s and Simmons’s testimony, along with the eyewitnesses’ descriptions of the suspects as well as the fact that Ladson hid from police for four months and drastically changed his appearance, we find that the jury could have reasonably concluded that Ladson was the third suspect that broke into Freeman’s apartment.

{¶28} We also feel that it is necessary to note that the inconsistencies as to who shot Freeman — Byrd, Briscoe, and Stradford testified that the man fitting Simmons’s description that night shot Freeman, while Townsend and Simmons testified that Ladson shot Freeman — have no legal bearing on Ladson’s convictions under his manifest weight argument. This is because a defendant who supports, assists, encourages, cooperates with, advises, or incites a principal in the commission of a crime and shares the principal’s criminal intent can be convicted of the principal criminal offense. *State v. Johnson*, 93 Ohio St.3d 240, 245-246, 754 N.E.2d 796 (2001), citing R.C. 2923.03(A)(2); *see also State v. Morgan*, 8th Dist. Cuyahoga No. 78142, 2001 Ohio App. LEXIS 1990, 6 (May 3, 2001) (“[T]here is no legal distinction between complicity to aggravated murder and aggravated murder.”).

{¶29} A defendant’s criminal intent can be inferred from the circumstances

surrounding the crime, including whether the defendant actively participated or assisted in the commission of the crime. *State v. Robinson*, 8th Dist. Cuyahoga No. 99290, 2013-Ohio-4375, ¶ 63-64. Further, R.C. 2923.03(F) provides that “[w]hoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender.”

{¶30} Having concluded that there was plenty of evidence from which the jury could conclude that Ladson was the third suspect who broke into Freeman’s apartment, the above inconsistencies are legally inconsequential because, at the very least, it was reasonable for the jury to conclude that Ladson supported, assisted, and cooperated with Townsend and Simmons in committing the underlying crimes of aggravated murder, murder, aggravated burglary, aggravated robbery, and kidnapping. According to the state’s evidence, Ladson brought a gun and accompanied Townsend and Simmons to Freeman’s apartment. After the men’s initial attempt to break into the apartment failed, they left, retrieved a crowbar, and returned to Freeman’s apartment, eventually breaking the outer door’s lock. Once inside, all three men threatened the occupants, demanding to know where the money was. Further, testimony established that the men had two guns in their possession and that they were all present in the apartment when one of the men shot Freeman.

{¶31} Accordingly, we find that Ladson’s manifest weight argument lacks merit as to his convictions for aggravated murder, murder, aggravated burglary, aggravated robbery, and kidnapping.

{¶32} We also affirm Ladson’s conviction for tampering with evidence. Ladson’s brief contained no argument in relation to the weight of the evidence of that conviction and, thus, under App.R.16(A)(7) and 12(A)(1)(b), we will not address that issue on appeal.<sup>2</sup> Accordingly, we overrule Ladson’s first assignment of error.

### **B. Ladson’s Right to Remain Silent**

{¶33} In his second assignment of error, Ladson argues that the trial court erred when it failed to declare a mistrial after the state made a comment infringing on his right to remain silent.

{¶34} A prosecutor may not comment on a defendant’s failure to testify. *Griffin v. California*, 380 U.S. 609, 615, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965). When an appellant argues that a prosecutor improperly commented on his decision to not testify at trial, we must determine “whether the language used was manifestly intended or was of such character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify.” *State v. Cooper*, 52 Ohio St.2d 163, 173, 370 N.E.2d 725 (1977).

{¶35} During the state’s closing argument, the following took place:

PROSECUTOR: The most important piece of evidence – and I noticed a

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<sup>2</sup> App.R. 16(A)(7) states, “The appellant shall include in its brief \* \* \* [a]n argument containing the contentions of the appellant with respect to each assignment of error for review and the reasons in support of the contentions[.]”

App.R. 12(A)(1)(b) states, “On an undismissed appeal from a trial court, a court of appeals shall \* \* \* [d]etermine the appeal on its merits on the assignments of error set forth in the briefs under App. R. 16[.]”

lot of you during the trial were doing this, and you're allowed to do this — when I was playing those very emotional phone calls and everyone had a reaction to it

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DEFENSE: Objection.

COURT: Sustained.

PROSECUTOR: One person did not have a reaction. One person remained stone-faced, and that person was the stone-cold killer, Shawn Ladson.

DEFENSE: Objection.

COURT Sustained.

{¶36} After review, we find that the prosecutor's comments did not implicate Ladson's right to remain silent. It is apparent that the prosecutor was not referencing Ladson's failure to testify, but rather was referencing Ladson's demeanor and lack of reaction to the evidence presented at trial.

{¶37} Further, the standard of review for prosecutorial misconduct is whether the comments and questions by the prosecution were improper, and, if so, whether they prejudiced appellant's substantial rights. *State v. Treesh*, 90 Ohio St.3d 460, 480, 739 N.E.2d 749 (2001). Prosecutorial misconduct will not provide a basis for reversal unless we find that, based on the entire record, the misconduct deprived the appellant of a fair trial. *State v. Lott*, 51 Ohio St.3d 160, 166, 555 N.E.2d 293 (1990). "The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor." *Smith v. Phillips*, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982).

{¶38} We find that the prosecutor’s comments were not improper. While some appellate courts have found a prosecutor’s comments regarding a defendant’s demeanor or reaction to evidence presented at trial to be improper, the Ohio Supreme Court has held that a prosecutor may comment on such matters. Compare *State v. McDonald*, 6th Dist. Lucas No. L-08-1032, 2010-Ohio-574, ¶ 27 (finding that “the prosecutor’s statement regarding appellant’s demeanor as the autopsy photographs were displayed was improper.”); *State v. Noser*, 6th Dist. Lucas No. L-00-1154, 2001 Ohio App. LEXIS 5412, 33 (Dec. 7, 2001) (finding that the prosecutor’s comments concerning the appellant’s demeanor during trial were “beyond the scope of proper argument”); *State v. Green*, 90 Ohio St.3d 352, 373, 738 N.E.2d 1208 (2000) (finding the prosecutor did not err “by commenting on Green’s demeanor, body language, and lack of any concern during trial”); *State v. Hill*, 75 Ohio St.3d 195, 203, 661 N.E.2d 1068 (1996) (“Counsel could legitimately point out that Hill did not react when scenes of his dead child were shown.”).

Because we are bound to follow the Ohio Supreme Court’s precedent, we find that the prosecutor could comment on Ladson’s demeanor and that his remarks were not improper.

{¶39} Additionally, we find that Ladson’s substantial rights were not prejudiced by the prosecutor’s comments because the trial court sustained Ladson’s objections and gave the jury a curative instruction immediately following the state’s closing argument. See *State v. Garner*, 74 Ohio St.3d 49, 59, 656 N.E.2d 623 (1995) (“A jury is presumed to follow the instructions, including curative instructions, given it by a trial judge.”).

Further, as thoroughly discussed in the preceding section of this opinion, the remaining evidence, standing alone, overwhelmingly points to Ladson's guilt, and therefore, the outcome would have been the same regardless of the prosecutor's comments. *See Bailey*, 8th Dist. Cuyahoga No. 97330, 2012-Ohio-3356, ¶ 51, citing *State v. Williams*, 38 Ohio St.3d 346, 528 N.E.2d 910 (1988) (holding that a defendant is not prejudiced by a prosecutor's improper remarks when the evidence "is so overwhelming that it constitutes defendant's guilt"); *Noser* at 34 (finding that, absent the prosecutor's comments, the jury still would have convicted the appellant). Accordingly, in light of the whole record, we do not find that the prosecutor's remarks "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974).

{¶40} As a result, we find that the court's denial of his motion for a mistrial was not error because the prosecutor's remarks did not implicate Ladson's right to remain silent and were not improper or prejudicial. Accordingly, we overrule Ladson's second assignment of error.

### **C. Merger**

{¶41} In his third assignment of error, Ladson argues that the court should have merged his convictions for aggravated robbery, his convictions for aggravated robbery and aggravated murder, and his convictions for aggravated robbery and aggravated burglary.

{¶42} Under Ohio law, "[w]here the same conduct by defendant can be construed



to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.” R.C. 2941.25(A). But

[w]here the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

R.C. 2941.25(B). In determining whether offenses merge, we analyze the defendant’s conduct. *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 26.

{¶43} In *Ruff*, the Supreme Court held that if a defendant’s conduct supports multiple offenses, the defendant can be convicted of all of the offenses if any one of the following is true: “(1) the offenses are dissimilar in import or significance — in other words, each offense caused separate, identifiable harm, (2) the offenses were committed separately, [or] (3) the offenses were committed with separate animus or motivation.” *Id.* at ¶ 25.

{¶44} We review a trial court’s legal conclusion as to whether offenses are allied offenses subject to merger de novo. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 30.

When deciding whether multiple offenses should have merged, the reviewing “court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus.”

*State v. Bailey*, 8th Dist. Cuyahoga No. 100993, 2014-Ohio-4684, ¶ 25, quoting *State v. Washington*, 137 Ohio St.3d 427, 2013-Ohio-4982, 999 N.E.2d 661.

## **1. Aggravated-Robbery Counts**

{¶45} Ladson first argues that the court should have merged his two counts for aggravated robbery because the charges were identical except for the weapons allegedly used to commit the offenses.

{¶46} While under the initial indictment, both counts for aggravated robbery charged that Ladson had “a deadly weapon, to wit: gun and/or crowbar,” the state amended the indictment, revising Count 6 to only include “gun” and Count 7 to only include “crowbar.” Based on these revisions and evidence presented at trial supporting allegations that Ladson had a gun and a crowbar during different points of the robbery, we find that such offenses are not allied offenses of similar import because they were committed separately and were against separate victims. In other words, Ladson committed one count of aggravated robbery by possessing and pointing a gun at Freeman and committed the other count of aggravated robbery by possessing and using a crowbar to threaten Briscoe. Therefore, the offenses do not merge.

## **2. Aggravated Robbery and Aggravated Murder**

{¶47} Second, Ladson argues that his counts for aggravated robbery should have merged with his count for aggravated murder. The jury found Ladson guilty of aggravated murder under R.C. 2903.01(B), the felony murder provision of the statute. The jury did not find Ladson guilty of Count 2 of the indictment, which alleged that he was guilty of aggravated murder under R.C. 2903.01(A), which requires prior calculation and design.

{¶48} The convictions do not merge because they caused separate, identifiable harm and were committed separately. Ladson completed the crime of aggravated robbery when he entered Freeman’s apartment with Townsend and Simmons with a gun and the intent to take money from Freeman. Shooting Freeman was unnecessary to complete the crime of aggravated robbery. Ladson’s conviction for aggravated murder required him to purposely cause another’s death under R.C. 2903.01(B). As a result, Ladson’s convictions for aggravated robbery and aggravated murder do not merge.

### **3. Aggravated Burglary and Aggravated Robbery**

{¶49} Ladson also argues that his conviction for aggravated burglary should have merged with his convictions for aggravated robbery.

{¶50} Ladson’s aggravated burglary conviction under R.C. 2911.11(A)(1) required the state to prove that he entered an occupied structure to commit a criminal offense (i.e., aggravated robbery) and “inflict[ed], or attempt[ed] or threaten[ed] to inflict physical harm on another[.]” His convictions for aggravated robbery, on the other hand, were under R.C. 2911.01(A)(1), which required the state to prove that he displayed, brandished, or used a deadly weapon while committing or attempting to commit a theft offense. Unlike his convictions for aggravated robbery under R.C. 2911.01(A)(1), Ladson’s conviction for aggravated burglary under R.C. 2911.11(A)(1) was not based on his possession, control, or use of a deadly weapon. Therefore, the offenses were committed separately and are not subject to merger.

### **4. Firearm Specifications**

{¶51} Finally, while in his brief Ladson argued that the court erred when it did not merge his firearm specifications, he conceded there was no error at oral argument. Specifically, Ladson stated that he misconstrued R.C. 2929.14 and acknowledged that the statute allowed the court to impose six years for his firearm specifications.

{¶52} Based on the above discussion, we overrule Ladson's third assignment of error.

{¶53} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR