

[Cite as *State v. Johnson*, 2018-Ohio-4899.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 106950**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LUCAS JOHNSON**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-17-621488-A

**BEFORE:** McCormack, P.J., S. Gallagher, J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** December 6, 2018

## **ATTORNEY FOR APPELLANT**

Christopher M. Kelley  
55 Public Square, Suite 2100  
Cleveland, OH 44113

## **ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor

By: Amy Venesile  
Gregory J. Ochocki  
Assistant County Prosecutors  
Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, OH 44113

TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Lucas Johnson appeals from his sentence on aggravated assault and attempted abduction, arguing that his offenses should have merged for sentencing.

{¶2} On September 26, 2017, Johnson was charged in a four-count indictment as follows: (1) felonious assault in violation of R.C. 2903.11(A)(1); (2) felonious assault in violation of R.C. 2903.11(A)(2); (3) abduction in violation of R.C. 2905.02(A)(1); and (4) domestic violence in violation of R.C. 2919.25(A). On February 20, 2018, Johnson pleaded guilty to an amended Count 1, aggravated assault, and amended Count 3, attempted abduction. The remaining charges were nolle.

{¶3} Immediately following the plea, the court held a sentencing hearing, during which the court heard arguments regarding merger. The court found the offenses are not allied and

therefore denied Johnson's request for merger. The court imposed a prison sentence of one year on each count, to be served concurrently, for a total sentence of one year in prison.

{¶4} Johnson now appeals his sentence, arguing in one assignment of error that the trial court erred in failing to merge the aggravated assault with the attempted abduction. He contends that the offenses were part of a single course of conduct that occurred within a short span of time and involved the same victim. We find his argument unpersuasive.

{¶5} R.C. 2941.25, the allied offenses statute, codifies the constitutional right against double jeopardy, thus prohibiting multiple punishments for the same offense. *State v. Robinson*, 8th Dist. Cuyahoga No. 99917, 2014-Ohio-2973, ¶ 53, citing *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 23. The statute provides when multiple punishments can and cannot be imposed:

(A) Where 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.

(B) Where 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; *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 12.

{¶6} In *Ruff*, the Ohio Supreme Court explained that when a defendant's conduct constitutes a single offense, the defendant may only be convicted and sentenced for that offense. *Id.* at ¶ 24. However, when the conduct "supports more than one offense, the court must

determine whether the offenses merge or whether the defendant may be convicted of separate offenses.” *Id.*

{¶7} To make this determination, the trial court must necessarily consider the defendant’s conduct, specifically considering “how were the offenses committed.” *Id.* at ¶ 25. In making this determination, the court must evaluate the defendant’s conduct, his or her animus, and the import of the offenses:

As a practical matter, when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when defendant’s conduct supports multiple offenses: (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation?

*Id.* at ¶ 31. If the answer is “yes” to any of the above, the defendant may be convicted of all of the offenses separately. *Id.*

{¶8} The court in *Ruff* continued to explain that

[w]hen a defendant’s conduct victimizes more than one person, the harm for each person is separate and distinct, and therefore, the defendant can be convicted of multiple counts. Also, a defendant’s conduct that constitutes two or more offenses against a single victim can support multiple convictions if the harm that results from each offense is separate and identifiable from the harm of the other offense.

*Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, at ¶ 26; *State v. Black*, 2016-Ohio-383, 58 N.E.3d 561, ¶ 12 (8th Dist.).

{¶9} Johnson was convicted of aggravated felonious assault and attempted abduction. R.C. 2903.12(A)(1), aggravated felonious assault, provides that “[n]o person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious

provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly \* \* \* [c]ause serious physical harm to another \* \* \*.” R.C. 2905.02(A)(1), abduction, provides that “[n]o person, without privilege to do so, shall knowingly \* \* \* [b]y force or threat, remove another from the place where the other person is found.”

{¶10} Here, the record shows that Johnson and the victim lived together. The incidents giving rise to the charges occurred on one day in September 2017. The facts as reported by the prosecutor are as follows: Johnson had been abusing the victim all day, and he secluded the victim in the basement of the home they shared “until the bruising went away.” Johnson reportedly beat the victim over the head with a coffee mug, hit her with his fists, and beat her over the knees with a board. At one point, Johnson retrieved the victim from the basement, brought her out of the home, and forced her into his truck. He then drove away. The victim was able to convince Johnson to stop the vehicle at a store. When he stopped, the victim jumped out of the vehicle and ran. One 911 caller reported that he observed a woman run out of a vehicle with a male chasing her, and another caller reported that there was a “badly bruised” woman in her home asking that the caller contact the police because her boyfriend had just beaten her up.

{¶11} According to the prosecutor, the victim was treated at MetroHealth Hospital for her injuries, which included “an assault hematoma, cephalohematoma, hydronecrosis, and an open wound on her arm.” Additionally, she suffered facial swelling and bruising.

{¶12} Under these facts, we do not find aggravated felonious assault and attempted abduction are allied offenses. Although the charges stem from a series of events that reportedly occurred in one day, the offenses were committed separately — at separate times and with

separate conduct. The aggravated assault occurred earlier in the day, reportedly at the couple's home, where Johnson used a coffee mug, his fists, and a board to cause serious physical harm to the victim. The attempted abduction occurred some time after the assault, when Johnson retrieved the victim from the basement of the house, after the beatings, and forced the victim into his vehicle and drove away. The abduction did not coincide with the aggravated assault, nor was it incidental to the aggravated assault. See *State v. Linder*, 8th Dist. Cuyahoga No. 106600, 2018-Ohio-3951, ¶ 77 (finding an assault of the victim in an apartment was distinct from the kidnapping of the victim, "that is, his purposeful removal of her, by force, from the place where she was found (inside the apartment) \* \* \*").

{¶13} Moreover, while both offenses involved the same victim, the harm that resulted from each offense is separate and identifiable. The victim here reportedly suffered facial swelling and bruising caused by the assault. She suffered separate harm caused by Johnson's act of forcing her out of her home and into his vehicle. The facts indicate that the victim fled from Johnson's vehicle and ran for safety as soon as Johnson stopped the vehicle, where she hid in a stranger's home and asked for help from the stranger and the police. See *State v. Harwell*, 2d Dist. Montgomery No. 27658, 2018-Ohio-1950, ¶ 41 (finding kidnapping and felonious assault involve separate, identifiable harms — abduction and being fired at with a deadly weapon — and thus do not qualify as allied offenses).

{¶14} Based on our review of the record, we find that two or more offenses of dissimilar import existed under R.C. 2941.25(B), with the harm resulting from each offense being separate and identifiable. Therefore, the trial court did not err in sentencing Johnson separately for aggravated assault and attempted abduction.

{¶15} Johnson's sole assignment of error is overruled.

{¶16} Judgment affirmed.

It is ordered that appellee recover of appellant 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.

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

---

TIM McCORMACK, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR