

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-07-1292

Appellee

Trial Court No. CR-200403278

v.

Lorenzo L. Jones

DECISION AND JUDGMENT

Appellant

Decided: December 31, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Ian B. English, Assistant Prosecuting Attorney, for appellee.

Deborah Kovac Rump, for appellant.

* * * * *

SINGER, J.

{¶ 1} This matter is before the court on remand from the Supreme Court of Ohio.

State v. Jones, 123 Ohio St.3d 146, 2009-Ohio-4689.

{¶ 2} Appellant, Lorenzo J. Jones, was convicted of robbery and aggravated robbery with a firearm specification for a 2004 armed invasion of a Toledo church. He

was sentenced to a nine year term of imprisonment for the aggravated robbery, a consecutive seven years for robbery and an additional three year term for the weapon specification. On initial appeal, this court vacated appellant's sentence pursuant to *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, but the remainder of his conviction was affirmed. *State v. Jones*, 6th Dist. No. L-05-1232, 2007-Ohio-563, ¶ 59. In his original appeal appellant asserted error in the trial court's determination that robbery and aggravated robbery were not allied offenses of similar import. We deemed any error waived, because appellant failed to raise the issue to the trial court. *Id.* at ¶ 46.

{¶ 3} On remand, the trial court reimposed the same sentence. At the sentencing hearing, appellant raised the issue of allied offenses. When the trial court again rejected this argument, appellant again appealed, arguing, inter alia, that that he should not be sentenced on both aggravated robbery and robbery because these were allied offenses of similar import. We rejected this argument. Comparing the elements of the two offenses, we concluded that aggravated robbery and robbery were not allied offenses. *State v. Jones*, 6th Dist. No. L-07-1292, 2009-Ohio-1742, ¶ 28.

{¶ 4} Appellant appealed our decision. The Supreme Court of Ohio accepted the appeal and reversed our decision on authority of *State v. Harris*, 122 Ohio St.3d 373, 2009-Ohio-3323. The court remanded the matter to us to consider whether the offenses of which appellant was convicted were committed with a separate animus.

{¶ 5} As we noted in our most recent consideration of this matter:

{¶ 6} "The analysis for recognizing allied offenses is a two step procedure. 'In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), courts are required to compare the elements of offenses in the abstract without considering the evidence in the case, but are not required to find an exact alignment of the elements. Instead, if, in comparing the elements of the offenses in the abstract, the offenses are so similar that the commission of one offense will necessarily result in commission of the other, then the offenses are allied offenses of similar import.' 'In the second step, the defendant's conduct is reviewed to determine whether the defendant can be convicted of both offenses. If the court finds either that the crimes were committed separately or that there was a separate animus for each crime, the defendant may be convicted of both offenses.'" *Jones*, 2009-Ohio-1742, ¶ 15. (Citations omitted,)

{¶ 7} Because we concluded, based on a pre-*Harris* analysis, that these offenses were not allied, we did not reach the second part of the test. Pursuant to the Ohio Supreme Court remand, this is what we must now consider.

{¶ 8} According to testimony at appellant's trial, on Sunday, January 4, 2004, a gunman wearing a ski mask entered the sanctuary of a Toledo church shortly after services concluded. The intruder, according to one witness, brandished the gun and said "this is a robbery and I want five hundred dollars out of here." The gunman grabbed a 17 year old girl near the doorway, but she jerked away. He then caught an eight year old girl, put the gun to her head and said, "I want five hundred dollars out of here and if I

don't get it, I'm going to blow her brains out." The man went from person to person in the sanctuary, demanding and receiving money. The man, later identified as appellant, eventually left the church with the collected money.

{¶ 9} "[W]here a defendant commits the same offense against different victims during the same course of conduct, a separate animus exists for each offense." *State v. Gregory* (1993), 90 Ohio App.3d 124, 129. "[T]he language of R.C. 2941.25 does not indicate that the legislature intended to encourage or to excuse multiple crimes simply because the defendant committed the same offense against others at the same time." *State v. Baker* (Dec. 20, 1996), 2d Dist. No. 15677, citing *State v. Solomon* (May 4, 1994). 2d Dist. No. 13160.

{¶ 10} "' * * * [A] thief who commits theft on three separate occasions or steals different property from three separate victims in the space, say, of 5 minutes, can be charged with and convicted of all three thefts. In the first instance the same offense is committed three different times, and in the second instance the same offense is committed against three different victims, i.e. with a different animus as to each offense. * * *.'" *State v. Hughley* (1984), 20 Ohio App.3d 77, 81, quoting the committee comments to Am.Sub.H.B. No. 511.

{¶ 11} In the present matter, appellant stole money at gunpoint from multiple members of the congregation. Each of these congregants constituted a separate victim. Each individual victim constitutes a separate animus. Although it could have charged

more, the state elected only to charge appellant with a single count of robbery and a single count of aggravated robbery. As it occurred, there was sufficient evidence to establish a separate animus for each of these offenses.

{¶ 12} Accordingly, there is no Double Jeopardy infringement. We reiterate our conclusion that appellant's first assignment of error is not well-taken.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal, pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
