[Cite as *State v. Dycus*, 2014-Ohio-1140.]

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

State of Ohio — Court of Appeals No. L-13-1107

Appellee — Trial Court No. CR0201202923

v.

Timothy A. Dycus — **DECISION AND JUDGMENT**

Appellant — Decided: March 21, 2014

* * * * *

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

Laurel A. Kendall, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that accepted appellant's *Alford* plea and found him guilty of two counts of attempt to commit aggravated arson. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} The undisputed facts relevant to the issues raised on appeal are as follows. On November 8, 2012, appellant set fire to a chair in his home in Toledo, Ohio. Shortly after he set the fire, appellant extinguished the flames and left the house having failed to notice that the fire had ignited the ceiling. As a result, the fire spread and two neighboring homes sustained damage before the fire was put out. Appellant was arrested shortly thereafter and, while in custody, admitted to setting the fire. On May 2, 2013, appellant entered *Alford* pleas to two counts of attempt to commit aggravated arson in violation of R.C. 2923.02 and 2909.02(A)(2). Prior to sentencing, appellant argued that the two charges were allied offenses and should merge for purposes of sentencing. The trial court disagreed and imposed separate sentences of 30 months for each of the two counts, to be served consecutively, with credit for time served. This timely appeal followed.

Appellant sets forth the following sole assignment of error:

> First Assignment of Error:
>
> The trial court committed reversible error when it failed to merge the two convictions, which are allied offenses of similar import.

{¶ 3} Appellant argues that the trial court erred in imposing consecutive sentences because the two offenses for which he was convicted should have merged as allied offenses of similar import. This argument is unpersuasive.

{¶ 4} R.C. 2941.25 provides:

> (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.

{¶ 5} R.C. 2941.25 prevents multiple convictions of a single defendant arising out of the same occurrence. *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 43. The statute limits legal exposure on acts which naturally arise from similar criminal acts when committed in a single transaction.

{¶ 6} The test to determine if multiple charges should be classified as allied offenses is two-pronged: (1) "[W]hether it is possible to commit one offense and commit the other with the same conduct" and (2) "whether the offenses were committed by the same conduct, i.e. 'a single act, committed with a single state of mind.'" *Id.* at ¶ 48-49, quoting *State v. Brown*, 119 Ohio St.3d 447, 2008-Ohio-4569, 895 N.E.2d 149, ¶ 50. "[I]f the court determines that the commission of one offense will never result in the commission of the other, or if the offenses are committed separately, or if the defendant

has separate animus for each offense, then, according to R.C. 2941.25(B), the offenses will not merge." *Johnson* at ¶ 51.

{¶ 7} If the same offense is committed against more than one victim, however, as was the case herein, the animus is separate and merger is not required. *State v. Keefe*, 6th Dist. Erie No. E-12-014, 2013-Ohio-629, ¶ 10; *State v. Smith*, 2d Dist. Montgomery No. 24402, 2012-Ohio-734, ¶ 19. "[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." *Johnson* at ¶ 15, fn. 2. (Additional citations omitted.) *See also State v. Alcala*, 6th Dist. Sandusky No. S-11-026, 2012-Ohio-4318, ¶ 37.

{¶ 8} Upon careful consideration, we find that the trial court did not err by imposing separate sentences for the two counts of attempt to commit aggravated arson. These were offenses against separate persons and not subject to merger. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to 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.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE