[Cite as *State v. Marrow*, 2005-Ohio-6483.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85625

STATE OF OHIO	:	JOURNAL ENTRY
	:	AND
Plaintiff-appellee	:	OPINION
	:	
-vs-	:	
	:	
DARRELL MARROW	:	
	:	
Defendant-appellant	:	

DATE OF ANNOUNCEMENT OF DECISION:	DECEMBER 8, 2005
CHARACTER OF PROCEEDING:	Criminal appeal from the Court of Common Pleas Case No. CR-451345
JUDGMENT:	Affirmed.
DATE OF JOURNALIZATION:	

APPEARANCES:

For Plaintiff-Appellee:	WILLIAM D. MASON, ESQ. CUYAHOGA COUNTY PROSECUTOR BY: CHRISTOPHER WAGNER, ESQ. ASST. COUNTY PROSECUTOR The Justice Center 1200 Ontario Street Cleveland, Ohio 44113
For Defendant-Appellant:	THOMAS GRIVEAS, ESQ. 1670 Columbus Rd., #3G Cleveland, Ohio 44113-2409

ANN DYKE, P.J.:

{¶ 1} Defendant Darrell Marrow appeals from his convictions for burglary. For the reasons set forth below, we affirm.

{¶ 2} On April 27, 2004, defendant was incited in case no. 451345 for one count of burglary and one count of resisting arrest. On May 12, 2004, he was indicted in case no. 451691 for one count of burglary and two counts of theft.

{¶ 3} The matters jointly proceeded to jury trial on September 30, 2004. For its case, the state presented the testimony of Tracie Walker, Cleveland Police Officer Christopher Ereg, Kenneth Stenson, Jr., Resheena Stenson, and Cleveland Police Detectives John Kraynik and Clarence Sanders.

{¶ 4} Tracie Walker testified that she lives in an apartment complex on Ansel Road in Cleveland. On the evening of March 18, 2004, Walker's children left the apartment and the door was unlocked. Walker was playing games on her computer. She glanced at a mirror on the computer and noticed defendant in her apartment. Walker asked him what he was looking for but he did not respond. Defendant took off his pullover jacket and Walker panicked and fled the apartment with her cordless telephone. Walker called her daughter's cell phone and told the girl not to return to the apartment. The girl had already returned to the apartment and reported that she had seen defendant but did not know him.

{¶ 5} Walker also called police who arrived in approximately five minutes. Walker next observed two officers wrestling with

defendant. Defendant did not say anything and appeared not to know what was happening.

{¶ 6} Walker had seen defendant around but he had never been to her apartment before and she did not know him.

{¶ 7} On cross-examination, Walker admitted that defendant had once come to her apartment looking for her son. She also admitted that nothing was taken from the apartment during the incident at issue.

{¶ 8} Officer Ereg testified that he and his partner, Officer Bishop, responded to the incident which occurred at Walker's apartment and observed defendant sitting on the couch. He stood and the officer detected the smell of "wet." The officer told him to put his hands behind his back but defendant would not comply. The officers struggled to arrest him and he swung at them. They sprayed him with pepper spray but it had no effect. The officers got him to the floor and gained control over him. Later, while being transported to the police station, defendant stated that he did not know why he was arrested.

{¶ 9} The Stensons established that in December 2003, their home on Manor Avenue in Cleveland was burglarized and clothing, a pair of boots and other items were taken. The couple then obtained a security system from ADT. Thereafter, on March 24, 2004, while the couple was out, they received a call from ADT informing them that their home alarm had been activated. They returned home ten

to fifteen minutes later and observed that the back door was open. They next observed defendant, wearing clothing and boots stolen during the prior break-in, exiting the home with a garbage bag. Mr. Stenson confronted defendant and defendant insisted that his friend lived at the house, then dropped the bag and fled.

{¶ 10} Mrs. Stenson followed defendant in her vehicle. She observed him approach a multi-colored house near hers. Neighbors indicated that defendant had gone inside the house. Police arrived and apprehended defendant from this house.

{¶ 11} Mr. Stenson observed that the back door had been kicked from its hinges, the ADT control panel had been kicked from the wall and the contents of the downstairs of the home had been scattered.

{¶ 12} The police apprehended defendant a short time later. He was wearing different clothing and no longer had on the boots that Mr. Stenson had previously observed. The officers then removed clothing from the home, including the boots.

{¶ 13} They next examined the contents of the bag that defendant had dropped as he fled and observed their clothing, and an alcoholic beverage.

{¶ 14} Det. Kraynik testified that he and his partner, Det. Pesta, responded to the March 24, 2004, call at the Stensons' home. He spoke with the Stensons and some of their neighbors and learned that a man had fled to a nearby house. Linda Cannon gave the

officers permission to search the house. Det. Kraynik observed jeans, a green pullover, skullcap and boots, the clothing which the Stensons had indicated that the intruder was wearing. He also observed defendant hiding in a pile of clothing. Defendant was wearing only his underwear at this time.

{¶ 15} Det. Kraynik permitted defendant to dress and then brought him to the Stensons. Mr. and Mrs. Stenson both identified defendant as the man they had observed earlier at their home. Det. Kraynik also compared the tread of the boots recovered from the area where defendant was found to the boot prints near the Stensons' back door and ADT panel.

{¶ 16} The officers transported him to the central booking area. At this time, according to Det. Kraynik, defendant stated that he did not know why he did such a stupid thing.

{¶ 17} On cross-examination, Det. Kraynik admitted that he did not take fingerprints from the home.

{¶ 18} Det. Sanders testified that he was assigned to conduct a follow-up investigation in this matter. He interviewed defendant and he indicated that he had been smoking "wet" or marijuana mixed with alcohol and was high when he broke into the Stensons' home.

{¶ 19} At the conclusion of its case, the state amended the theft counts in Case No. 451691 to state amounts less than $500,rendering these charges misdemeanor offenses. Defendant

elected to present evidence. He testified on his own behalf and also offered the testimony of Linda Cannon.

{¶ 20} Linda Cannon testified that defendant is the father of her son and that she lives with him on Manor Avenue. On March 24, 2004, Mr. Stenson confronted her as she, her mother and two sons returned from the store. After she was inside her house, two officers entered and asked to speak with her. The officers indicated that she could be charged with harboring a felon and asked to search the house and she indicated that she had no problem with them searching. They then placed her in the bathroom.

{¶ 21} The officers took clothing and boots from the home. According to Cannon, the clothing had belonged to defendant for a while.

{¶ 22} Cannon further testified that they had previously lived on Ansel Road in Cleveland. At this time, they met Tracie Walker. Cannon next stated that defendant has a season job with a roofing company and helps support her and her children. She had no knowledge of whether defendant smokes "wet."

{¶ 23} Defendant testified with regard to the incident on Manor Avenue that Mr. Stenson approached him as he was bringing in his garbage cans from the street. He next claimed that Stenson stole two pounds of marijuana from him. He next claimed that he intended to straighten up the apartment and began putting clothing in garbage bags. He next observed police in the apartment as he was

undressing. The officers placed him in the back of the police cruiser and the Stensons identified him.

{¶ 24} As to the incident involving Tracie Walker, defendant testified that he knows Walker's son, Maurice, and Maurice invited him to the home that evening to pick up a compact disc. He claimed that when he arrived at the apartment, the door was unlocked and someone told him to come in. He sat down then fell asleep.

{¶ 25} Defendant stated that he has prior felony convictions relating to marijuana use. He also has a prior conviction for burglary.

{¶ 26} On cross-examination, defendant admitted that he also has convictions for trafficking in cocaine with a juvenile specification, attempted robbery, and has pled to a total of seven felonies since 1997.

{¶ 27} Defendant was subsequently convicted of burglary and acquitted of resisting arrest in Case No. 451345, and was convicted of all charges in Case No. 451691. The trial court determined that imprisonment should be imposed in both matters. In Case No. 451345, the court sentenced defendant to a term of seventeen months and ordered it to run concurrently with a term of four years in Case No. 451691. Defendant now appeals and assigns two errors for our review.

{¶ 28} Defendant's first assignment of error states:

{¶ 29} "The trial court abused its discretion by joining the offenses in CR 451345 and 451691 over the objection of defendant."

{¶ 30} Crim.R.8 allows for the joinder of multiple charges if each offense is based upon "the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan or are part of a course of criminal conduct."

{¶ 31} However, "if it appears that a defendant or the state is prejudiced by a joinder of offenses * * * the court shall order an election or separate trial of counts * * *." Crim.R. 14.

{¶ 32} The decision concerning the joinder of offenses is a matter which lies within the sound discretion of the trial court. *State v. Strobel* (1988), 51 Ohio App.3d 31, 554 N.E.2d 916.

{¶ 33} A defendant bears the burden of proving that he was prejudiced by the joinder of the multiple offenses. *State v. Torres* (1981), 66 Ohio St.2d 340, 421 N.E.2d 1288. Prejudice is not demonstrated if one offense would have been admissible as "other acts" evidence under Evid.R. 404(B) or if the evidence of each crime joined at trial is simple and direct. *State v. Lott* (1990), 51 Ohio St.3d 160, 163, 555 N.E.2d 293; *State v. Schaim,* 65 Ohio St.3d 51, 59, 1992 Ohio 31, 600 N.E.2d 661.

{¶ 34} Applying the foregoing, we cannot conclude that the trial court abused its discretion in joining both matters for trial. The evidence of each crime was simple and distinct, and as evidenced by

its acquittal on the charge of resisting arrest, the jury was clearly capable of considering each charge on the basis of its own individual merit.

{¶ 35} Defendant's second assignment of error states:

{¶ 36} "Defense counsel's failure to move to sever the trial amounted to ineffective assistance of counsel."

{¶ 37} Because we have rejected the underlying claim of error, we must likewise reject the assertion of ineffective assistance of counsel which is premised upon that error. *State v. Henderson* (1988), 39 Ohio St.3d 24, 33, 528 N.E.2d 1237.

{¶ 38} The second assignment of error is overruled.

Affirmed.

It is ordered that appellee recover of appellant its 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.

DIANE KARPINSKI, J., AND

ANTHONY O. CALABRESE, JR., J., CONCUR.

ANN DYKE
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R.22(B), 22(D) and 26(A); Loc.App.R.22. This decision will be journalized and will become the judgment and order of the court pursuant to App. R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).