

[Cite as *State v. Studgions*, 2010-Ohio-5480.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94153

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMIL STUDGIONS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART, VACATED IN PART,
AND REMANDED FOR RESENTENCING

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-523118

BEFORE: Celebrezze, J., Blackmon, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: November 10, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, Jamil Studgions, appeals from his convictions for felonious assault, kidnapping, abduction, and domestic violence. Based on our review of the record and pertinent case law, we affirm in part, vacate in part, and remand for resentencing.

{¶ 2} According to the testimony of the victim, Marjorie Buggs, she and appellant had a romantic relationship and appellant is the father of her daughter. On April 7, 2009, appellant and Buggs traveled to downtown Cleveland to seek the assistance of a public defender. Due to the large number of individuals also seeking assistance in the public defender's office

that day, rather than waiting, appellant and Buggs decided to go to The Blind Pig, a nearby bar. According to Buggs, she drank a couple glasses of Chardonnay and one tall beer; appellant spent most of his time outside the bar smoking cigarettes but did drink one beer while they were there.

{¶ 3} After they left the bar, Buggs's father picked up the couple and drove them to appellant's mother's house. After the couple took a nap, appellant and his mother got into an argument, so the couple decided to leave and travel to University Hospitals, where their daughter was a patient.¹ While en route to the hospital, the couple got into an argument over money. Buggs testified that once she parked the car in the hospital's parking garage, she ran away from appellant and sought refuge in a nearby apartment building. The building was ordinarily locked, but Buggs gained entry as someone was leaving the building.

{¶ 4} Once inside the apartment building, Buggs felt safe because the building was locked. Three to four minutes later, however, appellant gained entry into the building in the same manner as Buggs. According to Buggs, appellant asked her for the car keys, but she refused to give them to him.

¹The couple's daughter was born in March 2009, but was premature. Due to health conditions, she was still a patient at University Hospitals in April 2009. As a result, Buggs and appellant were staying in a room at the hospital to be near their daughter.

Appellant then attempted to reach into Buggs's pockets, but Buggs jerked away from him. At this point, appellant bit Buggs in the eye.

{¶ 5} Officers Stephen Brady, Thomas Sindelar, and Jim McGowan with the University Circle Police Department all testified that on the date in question, they arrived in the area near University Hospitals due to a report of two men chasing each other down the street. According to Officer Sindelar, one of the men was reported to be wearing a Notre Dame jacket. When they arrived on the scene, the officers observed Buggs talking to an officer with the Cleveland Police Department. Upon speaking with Buggs, they learned that she and the father of her child got into an altercation and he bit her on the eye. The officers testified that Buggs's eye was bleeding heavily, and they insisted she be examined at the emergency room. Due to her intoxicated state, the staff at the emergency room suggested that Buggs come back the following day for treatment. When she returned the following day, she received stitches on both the inside and outside of her eye. She also testified at trial that it is difficult to see and she has a permanent scar from the event.

{¶ 6} Appellant was convicted of felonious assault,² kidnapping,³ abduction,⁴ and domestic violence.⁵ The trial judge sentenced him to eight

²R.C. 2903.11(A)(1), a second-degree felony.

³R.C. 2905.01(A)(2), a first-degree felony.

⁴R.C. 2905.02(A)(2), a third-degree felony.

years of incarceration and a \$250 fine for felonious assault, eight years and a \$250 fine for kidnapping, four years and a \$250 fine for abduction, and ordered him to pay a \$250 fine for domestic violence. The judge ordered these sentences to run concurrently to one another for an aggregate sentence of eight years and a total fine of \$1,000. This appeal followed, wherein appellant argues his convictions are based on insufficient evidence and are against the manifest weight of the evidence.

Law and Analysis

{¶ 7} When deciding whether a conviction was based on sufficient evidence, the appellate court must determine, after viewing the evidence in a light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492; *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 8} The United States Supreme Court recognized the distinction in considering a claim based upon the manifest weight of the evidence as opposed to sufficiency of that evidence. The Court held in *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 72 L.Ed.2d 652, that, unlike a reversal based upon the insufficiency of the evidence, an appellate court's disagreement with the jurors' weighing of the evidence does not require

⁵R.C. 2919.25(A), a first-degree misdemeanor.

special deference accorded verdicts of acquittal. *Id.* at 43. Upon application of the standards enunciated in *Tibbs*, the court in *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717, has set forth the proper test to be utilized when addressing the issue of manifest weight of the evidence. The *Martin* court stated that “[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Id.* at 175.

{¶ 9} Appellant was first convicted of felonious assault in violation of R.C. 2903.11(A)(1), which prohibits an individual from causing serious physical harm to another. He was also convicted of kidnapping in violation of R.C. 2905.01(A)(2), which prohibits an individual from restraining the liberty of another to facilitate the commission of a felony — in this case, felonious assault. He was also convicted of abduction in violation of R.C. 2905.02(A)(2), which states, “[n]o person, without privilege to do so, shall knowingly do any of the following: * * * (2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear[.]” Finally, appellant was convicted of domestic violence in violation of R.C. 2919.25(A), which

states that “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶ 10} The evidence presented at trial demonstrated that appellant chased Buggs into the apartment complex where she was seeking refuge and, when she refused to give him the car keys, bit her on the eye, causing so much damage that she needed stitches and has a permanent scar. This court has consistently held that the need for stitches constitutes serious physical harm for purposes of a felonious assault conviction. *State v. Churchwell*, Cuyahoga App. No. 88171, 2007-Ohio-1600, ¶28. See, also, *State v. Paythress*, Cuyahoga App. No. 91554, 2009-Ohio-2717, ¶7; *State v. Payne* (July 20, 2000), Cuyahoga App. No. 76539. This evidence alone was sufficient to find appellant guilty of felonious assault.

{¶ 11} Appellant argues that the state did not prove he restrained Buggs’s liberty in order to support his kidnapping and abduction convictions. According to the jury instructions, “[t]o restrain one of her liberty means to limit or restrain the victim’s freedom of movement. The restraint need not be for any specific duration of time or in any specific manner.” Although Buggs did not expressly testify that appellant grabbed her or restrained her liberty in some other fashion, it is unfathomable to think that she simply stood still while appellant bit her on the eye. Common sense dictates that in order to bite Buggs on the eye, appellant must have restrained her liberty in

some fashion. As such, sufficient evidence was presented to support appellant's kidnapping and abduction convictions.

{¶ 12} The only other element required for a domestic violence conviction is that appellant and Buggs be considered household or family members pursuant to R.C. 2919.25. This statute provides multiple definitions of family or household member, one of which is "[t]he natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent." R.C. 2919.25(F)(1)(b). The evidence presented at trial indicated that appellant is the father of Buggs's daughter. Based on this testimony, there was enough evidence to find appellant guilty of domestic violence.

{¶ 13} The testimony of Buggs was sufficient to find appellant guilty of the crimes charged. After a thorough review of the trial transcript, we see no significant discrepancies in the testimony. Appellant's convictions were based on competent, credible evidence. Nothing in the record suggests that the jury lost its way or that a manifest miscarriage of justice occurred. Appellant's convictions are not based on insufficient evidence, nor are they against the manifest weight of the evidence. Appellant's assignments of error are overruled.

Allied Offenses

{¶ 14} Although not raised by appellant, there is an issue with allied offenses. R.C. 2941.25(A) provides that, “[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 can be convicted of only one.” It is well-established that a two-step analysis is required to determine if two offenses are allied offenses of similar import. *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181, ¶14. “In the first step, the elements of the two crimes are compared. If the elements of the offenses correspond to such a degree that the commission of one crime will result in the commission of the other, the crimes are allied offenses of similar import and the court must then proceed to the second step. 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.’ (Emphasis sic.)” *Id.* at ¶14, quoting *State v. Blankenship* (1988), 38 Ohio St.3d 116, 117, 526 N.E.2d 816.

{¶ 15} Although appellant has not argued that he was convicted of allied offenses, the Ohio Supreme Court held in *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶31-32, that failure to merge allied offenses constitutes plain error. Although the trial judge indicated at

sentencing that she thought some of the charges should merge for sentencing, she failed to follow the proper procedure for doing so. She sentenced appellant for each of the counts he was convicted of and then ran those counts concurrently to one another. Based on the holding in *Underwood*, this procedure is insufficient.

{¶ 16} Our research shows, and the state concedes, that appellant was convicted and sentenced for allied offenses. *State v. Wilson*, Cuyahoga App. No. 91971, 2010-Ohio-1196, ¶95 (kidnapping and felonious assault are allied offenses); *State v. Clark*, Hamilton App. No. C-090573, 2010-Ohio-3962, ¶10 (kidnapping and abduction are allied). The evidence clearly demonstrated that appellant acted with a single animus; therefore, his convictions for allied offenses should have merged for sentencing. Because the trial court erred in failing to merge these offenses, appellant's sentence is vacated, and this matter is hereby remanded for a resentencing where the state may elect which allied offenses it wishes to proceed under.

Conclusion

{¶ 17} Because the evidence demonstrated that appellant used force to restrain Buggs's liberty and cause her serious physical injury, appellant's convictions are not based on insufficient evidence and are not against the manifest weight of the evidence. The trial court erred, however, in sentencing appellant for multiple allied offenses.

{¶ 18} Convictions affirmed; cause vacated in part and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share 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 resentencing.

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

FRANK D. CELEBREZZE, JR., JUDGE

ANN DYKE, J., CONCURS;
PATRICIA ANN BLACKMON, P.J., DISSENTS (WITH SEPARATE
OPINION)

PATRICIA ANN BLACKMON, P.J., DISSENTS:

{¶ 19} I concur with most of the majority opinion; however, I respectfully dissent as to the kidnapping and abduction counts. Abduction requires that one remove the victim from the place where she was found or restrain the victim under a risk of physical harm. R.C. 2905.02. Whereas, kidnapping requires the removal or restraint be done to facilitate the commission of a

felony, to terrorize, or to inflict serious physical harm on the victim. R.C. 2905.01. *State v. McKinney*, 11th Dist. No. 2007-T-0004, 2008-Ohio-3256.

{¶ 20} Page 5 of the majority opinion states in pertinent part as follows: “The evidence presented at trial demonstrated that appellant chased Buggs into the apartment complex where she was seeking refuge and, when she refused to give him the car keys, he bit her on the eye, causing so much damage that she needed stitches and has a permanent scar.” Page 6 of the opinion goes on to state that Buggs did not testify that Studgions grabbed her or restrained her liberty in any way.

{¶ 21} Since the evidence fails to indicate that Studgions removed Buggs from where she was found or restrained her under risk of physical harm, or to inflict serious physical harm, the elements of kidnapping and abduction, therefore, have not been met. I would have reversed on these two counts.