[Cite as *State v. Fuell*, 2026-Ohio-4651.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY

STATE OF OHIO, Plaintiff-Appellee, - vs - JAMES T. FUELL, Defendant-Appellant.	**CASE NO. 2026-T-0050** Criminal Appeal from the Court of Common Pleas Trial Court No. 2026 CR 00051

OPINION AND JUDGMENT ENTRY

Decided: November 23, 2026
Judgment: Reversed, vacated, and remanded

Dennis Watkins, Trumbull County Prosecutor, and *Charles L. Morrow*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Edward F. Borkowski, Jr., P.O. Box 609151, Cleveland, OH 44109 (For Defendant-Appellant).

MATT LYNCH, P.J.

{¶1} Appellant, James T. Fuell, appeals the judgment of the Trumbull County Court of Common Pleas sentencing him to an indefinite term of imprisonment of 8 to 12 years and a concurrent 36-month term of imprisonment following his guilty pleas to one count of robbery and one count of attempted felonious assault. Fuell contends the trial court erred by failing to merge his convictions at sentencing since they are allied offenses of similar import, and by sentencing him to the maximum term of imprisonment on the count of robbery.

{¶2} After careful consideration of Fuell's assignments of error, the record, and the pertinent law, we agree with Fuell that his convictions for robbery and attempted felonious assault should have been merged at sentencing. Accordingly, the judgment of the trial court is reversed, Fuell's sentence is vacated, and the instant matter is remanded for resentencing in accordance with the following.

Substantive and Procedural History

{¶3} On February 18, 2026, a Trumbull County grand jury indicted Fuell on two counts: Count (1) aggravated robbery, a first-degree felony, in violation of R.C. 2911.01(A)(1) and (C); and Count (2) felonious assault, a second-degree felony, in violation of R.C. 2903.11(A)(2) and (D)(1)(a).

{¶4} On March 25, 2026, the trial court held a plea hearing at which Fuell pleaded guilty to amended Count (1) robbery, a second-degree felony, in violation of R.C. 2911.02(A)(1) and (B); and amended Count (2) attempted felonious assault, a third-degree felony, in violation of R.C. 2923.02(A) and (E), and 2903.11(A)(2) and (D)(1)(a).

{¶5} The State recited the factual basis for the record:

> Had this matter proceeded to trial, the State would have proven beyond a reasonable doubt that on or about January 3rd, 2026, in Newton Falls, Trumbull County, Ohio, this Defendant entered into the Family Dollar and held [the victim] at knifepoint, demanding money from the store.
>
> When police arrived, this Defendant was outside the store and matched the description given by witnesses and stated he had a knife and admitting [sic] to the crime. The knife and money were taken and recovered from his person.

{¶6} The trial court accepted Fuell's guilty pleas and set the matter for a presentence investigation and sentencing hearing.

{¶7} On May 13, 2026, the trial court held a sentencing hearing. The court reviewed that it had considered the record, the oral statements, and the victim's

statement, as well as the principles and purposes of sentencing under R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12. The court noted it had also reviewed the video of the robbery showing Fuell "take a knife and put it into the cashier's back and demand money from him." The court found a sentence other than prison would demean the seriousness of the offense.

{¶8} The trial court sentenced Fuell to an indefinite prison term of a minimum of 8 years up to a maximum of 12 years on the count of robbery, and a concurrent 36-month prison term on the count of attempted felonious assault.

{¶9} Fuell timely appealed and raises two assignments of error for our review:

{¶10} "[1.] The trial court erred by failing to merge allied offenses.

{¶11} "[2.] Appellant's sentence is contrary to law."

Allied Offenses of Similar Import

{¶12} In his first assignment of error, Fuell contends the trial court's failure to merge the offenses of robbery and attempted felonious assault was plain error because the victim suffered no harm separate from that inherent in the robbery.

{¶13} Fuell failed to raise the issue of merger in the trial court, thus we review for plain error. *State v. Bailey*, 2022-Ohio-4407, ¶ 7. "Under the plain-error doctrine, intervention by a reviewing court is warranted only under exceptional circumstances to prevent injustice." *Id.* at ¶ 8. "To establish plain error, [the appellant] must show that an error occurred, that the error was obvious, and that there is 'a reasonable probability that the error resulted in prejudice,' meaning that the error affected the outcome of the trial." (Emphasis deleted.) *State v. McAlpin*, 2022-Ohio-1567, ¶ 66, quoting *State v. Rogers*, 2015-Ohio-2459, ¶ 22.

{¶14} "Where the same conduct by the 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." R.C. 2941.25(A); *State v. Whitfield*, 2010-Ohio-2, ¶ 17 (a defendant may be indicted and tried for allied offenses but may be sentenced on only one of the allied offenses).

{¶15} "'"[W]hen 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? An affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered."'" *Bailey* at ¶ 10, quoting *State v. Earley*, 2015-Ohio-4615, ¶ 12, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 31.

{¶16} "Although determining whether R.C. 2941.25 has been properly applied is a legal question, it necessarily turns on an analysis of the facts, which can lead to exceedingly fine distinctions." *Id.* at ¶ 11, citing *State v. Johnson*, 2010-Ohio-6314, ¶ 52 ("this analysis may be sometimes difficult to perform and may result in varying results for the same set of offenses in different cases"), *abrogated in part by Ruff* at ¶ 1 (holding that "offenses resulting in harm that is separate and identifiable are offenses of dissimilar import" for purposes of merger under R.C. 2941.25(B)). *Accord State v. Cameron*, 2025-Ohio-3192, ¶ 17-20 (11th Dist.).

{¶17} Pursuant to R.C. 2911.02(A)(1), robbery, "[n]o person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, shall . . . [h]ave a deadly weapon on or about the offender's person or under the offender's control."

{¶18} Pursuant to R.C. 2923.02(A) and 2903.11(A)(2), attempted felonious assault, "[n]o person . . . shall engage in conduct that, if successful, would constitute or result in . . . knowingly . . . caus[ing] serious physical harm to another . . . ."

{¶19} Having reviewed the record, we agree with Fuell that his convictions for the crimes of robbery and attempted felonious assault should have been merged at sentencing. As our review of the record reveals, Fuell went into the store, held the victim at knifepoint, and demanded money. There is a single victim, one act, and one resulting harm. The offense of attempted felonious assault, i.e., holding the victim at knifepoint, was an integral part of committing the robbery. In cases where we have affirmed the trial court's decision not to merge offenses where there was a single victim, the harm that resulted from each offense was separate and identifiable. *See, e.g. State v. Gambino*, 2022-Ohio-1554, ¶ 49 (11th Dist.) (trial court properly declined to merge convictions for aggravated robbery and felonious assault where the harm inflicted constituted a greater use of force than was necessary to accomplish the offense of aggravated robbery, and there was both physical harm and property loss); *State v. Ison*, 2025-Ohio-3193, ¶ 43 (11th Dist.) (offenses of aggravated robbery and felonious assault were separate offenses because of excessive force used that resulted in physical harm and property loss). Unlike those cases, in the instant matter, it cannot be said that Fuell used more force than was necessary to facilitate the robbery, and while no doubt the experience was psychologically traumatic for the victim, there was no attempted physical harm separate from the robbery.

{¶20} While Fuell stated to the officers after he was already detained that he wanted to "kill the clerk, and if you let me go, I am going to kill someone," "he wanted to hurt himself and take others with him," and he was "just tired," these statements were obviously made incident to his arrest and have no bearing on our analysis. The State did

not introduce sufficient facts to support two separate and distinct offenses. Thus, based on the record before us, the trial court committed plain error in failing to merge Fuell's convictions before sentencing him.

{¶21} Accordingly, we must reverse the judgment of the trial court, vacate Fuell's sentence, and remand for resentencing. On remand, "the trial court must merge the crimes into a single conviction and impose a sentence that is appropriate for the offense chosen for sentencing. . . . The imposition of concurrent sentences is not the equivalent of merging allied offenses." *State v. Damron*, 2011-Ohio-2268, ¶ 17. Further, upon resentencing, the State should elect which allied offense it will pursue against Fuell.

{¶22} Since we are vacating Fuell's sentence and remanding for resentencing, his second assignment of error challenging the trial court's imposition of a maximum sentence on the count of robbery is rendered moot. *See* App.R. 12(A)(1)(c); *State v. Taugner*, 2023-Ohio-2117, ¶ 19-20 (11th Dist.) (assignments of error concerning the appellant's sentence were rendered moot by disposition of first assignment of error vacating the appellant's sentence and remanding the matter for resentencing).

{¶23} The judgment of the Trumbull County Court of Common Pleas is reversed, Fuell's sentence is vacated, and the instant matter is remanded to the trial court for resentencing in accordance with this opinion.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is reversed, Fuell's sentence is vacated, and this matter is remanded to the trial court for further proceedings consistent with the opinion.

Costs to be taxed against appellee.

PRESIDING JUDGE MATT LYNCH

JUDGE EUGENE A. LUCCI,
concurs

JUDGE ROBERT J. PATTON,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

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