

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	CASE NO. CA2025-08-099
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
ABDULLAH YUSUFI,	:	8/31/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2025-01-0030

Michael T. Gmoser, Butler County Prosecuting Attorney, and Michael Greer, Assistant Prosecuting Attorney, for appellee.

Repper-Pagan Law, Ltd., and Christopher J. Pagan, for appellant.

OPINION

BYRNE, P.J.

{¶ 1} Abdullah Yusufi appeals his sentence after being convicted in the Butler County Court of Common Pleas for felonious assault and domestic violence. On appeal, Yusufi argues the trial court should have merged his convictions at sentencing because

they are offenses of similar import. Upon review, we agree. Both of Yusufi's crimes had the same victim, the same physical harm, and the underlying conduct leading to those offenses occurred at the same time with the same motivation. The State's arguments to the contrary are unconvincing.

Background

{¶ 2} The underlying facts of this case are not contested and were captured on a home security camera. Yusufi became angry with his wife (the "Victim") after he unsuccessfully attempted to print coloring pages for their children. Yusufi began yelling at the Victim and ordered her to fix the printer. Continuing to yell, Yusufi approached the Victim, who was seated on the floor between a couch and a coffee table, leaned over, and smacked a heavy glass mug off the table. The mug immediately hit the Victim in the face, causing injuries including a cut to her lip as well as serious gum and tooth damage. She received treatment at multiple hospitals but still lost one upper tooth and has a scar on her lip where stitches were applied. During the incident, one of the Victim and Yusufi's children sat close beside the Victim on the floor, and another child sat nearby on the end of the couch.

{¶ 3} A Butler County grand jury indicted Yusufi for felonious assault and domestic violence. After trial, a jury found Yusufi guilty of both offenses. The trial court sentenced Yusufi to an indefinite prison term totaling seven to 10.5 years in prison for the felonious assault charge and to 180 days in jail for the domestic violence charge. The court also imposed mandatory postrelease control and \$12,000 in restitution. At sentencing, the trial court gave Yusufi various advisements regarding the sentence as required by law. After finishing its advisements, the court asked defense counsel if there were any questions or comments to which counsel replied, "Just object for purposes of the record." The trial court replied, "That objection will be noted and the Court will overrule

it."

{¶ 4} Yusufi now appeals, raising one assignment of error.

First Assignment of Error - Merger

Felonious Assault and Domestic Violence

{¶ 5} Under Ohio law, knowingly causing "serious physical harm to another" constitutes felonious assault. R.C. 2903.11(A)(1). Similarly, "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member" constitutes domestic violence. R.C. 2919.25(A). Each of these offenses must be committed knowingly. R.C. 2919.25(A); R.C. 2903.11(A)(1). "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B).

Merger

{¶ 6} When a defendant is accused of "two or more allied offenses of similar import," the indictment may include both offenses, but the defendant may ultimately only be convicted of one offense so as to prevent double jeopardy. R.C. 2941.25(A). However, when "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," a defendant can be convicted of all offenses. R.C. 2941.25(B). Stated differently, Ohio law permits multiple convictions for multiple offenses if any one of the following applies:

- (1) the offenses were dissimilar in import, determined by analyzing whether (a) the defendant's conduct harmed more than one person; or (b) the defendant's conduct caused two or more separate and identifiable harms to one person;
- (2) the offenses were committed separately; or

- (3) the offenses were committed with separate animus or motivation.

State v. Ruff, 2015-Ohio-995, ¶ 13, 26. The focus of our analysis must be on the defendant's conduct and is fact dependent. *Id.* at ¶ 26.

Standard of Review

{¶ 7} Merger is an issue of law that appellate courts typically review de novo. *State v. Penwell*, 2017-Ohio-7465, ¶ 9 (12th Dist.). However, the failure to raise the issue of merger at the trial level results in forfeiting that issue on appeal unless plain error is shown. *State v. Rogers*, 2015-Ohio-2459, ¶ 21-22. When merger is subject to plain error review, a defendant must "demonstrate a reasonable probability that the convictions are for allied offenses of similar import committed with the same conduct and without a separate animus." *Id.* at ¶ 3. The plain error doctrine should only be applied "with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph 3 of syllabus.

Analysis

{¶ 8} In his sole assignment of error, Yusufi argues the trial court erred by not merging his felonious assault and domestic violence convictions. The State argues that because Yusufi only objected "for purposes of the record" and did not expressly raise the issue of merger at sentencing, Yusufi has forfeited all but plain error.

{¶ 9} Regardless of whether Yusufi sufficiently raised the issue of merger at the trial level, we conclude his crimes should have been merged. Both crimes had the same victim—Yusufi's wife. Similarly, both crimes had the same identifiable, physical harm—a cut to the Victim's lip as well as serious gum and tooth damage. However, the State argues these crimes were committed separately because "to be convicted of domestic violence, [Yusufi] merely had to attempt to cause physical injury" to the Victim, and "at

the time [he] smacked the glass mug, he had committed all the elements of domestic violence" under Ohio law.

{¶ 10} The State's arguments are unconvincing. Yusufi's criminal act of striking the glass mug off the table and his motivation for doing so (anger over the Victim not immediately fixing the malfunctioning printer), were the same for both offenses. Through this single course of conduct, Yusufi did not merely attempt to cause harm to his wife. He immediately succeeded, and as discussed above, the resulting harm is indistinguishable between the two offenses. *Compare with State v. Pichardo-Reyes*, 2017-Ohio-8534, ¶ 64 (12th Dist.) (finding separate and identifiable conduct as well as harm where Reyes "attempt[ed] to stab Lopez with [a] knife and then actually caus[ed] her physical harm through . . . punches, scratches, and bites."); *State v. Wilson*, 2025-Ohio-3038, ¶ 27 (5th Dist.) (refusing to merge felonious assault and domestic violence convictions where the defendant choked the victim, "release[ed] her and stepp[ed] away" before coming back and knocking her to the floor, causing injury to her elbow and arm.).

{¶ 11} Under de novo review, we conclude the facts in this case satisfy *Ruff* because (1) they were similar in import as there was only one victim, and the offenses did not create separate and identifiable harms; (2) Yusufi did not commit the offenses separately, but simultaneously to one another; and (3) Yusufi committed the offenses with the same motivation. Likewise, this analysis satisfies plain error review because Yusufi met his burden to "demonstrate a reasonable probability that the convictions are for allied offenses of similar import committed with the same conduct and without a separate animus." *Rogers*, 2015-Ohio-2459 at ¶ 3.

{¶ 12} Despite the foregoing, the State argues Yusufi's offenses should not be merged because to do so "would frustrate the express intention" of Ohio's legislature with regard to the domestic violence statute. The State compares that statute to Ohio's

Racketeer Influence and Corrupt Organizations Act ("RICO"). See *generally* R.C. 2923.32. The Ohio Supreme Court observed in *State v. Miranda*, 2014-Ohio-451, that the RICO statute's purposes—mirroring those of its federal counterpart—include the imposition of "enhanced sanctions" and "cumulative liability" for criminal enterprises. *Id.* at ¶ 14, quoting *State v. Schlosser*, 79 Ohio St.3d 329, 332, 335 (1997).¹ The State asserts that, consistent with *Miranda*, "[i]t is crystal clear that the intent of the General Assembly was to provide special protection for a particular class of people *and* to provide additional punishment for those who commit assault against that class of people." (Emphasis added).

{¶ 13} We agree with the State's contention that Ohio's domestic violence statute was intended to provide special protection for a particular class of people. See *State v. Carswell*, 2005-Ohio-6547, ¶ 20 (12th Dist.) ("In enacting R.C. 2919.25, the General Assembly clearly intended to address household violence in all its forms . . ."). However, we see no support for the State's contention that the statute was also intended to provide additional punishment in a case like this one. The State's comparison of that statute with Ohio's RICO statute is inapt because "the General Assembly intended to enhance the government's ability to quell organized crime [with the RICO statute] *by imposing strict liability for such acts*" regardless of a defendant's state of mind. (Emphasis added.) *Schlosser* at 333. Indeed, the RICO statute makes the mere act of being "employed by, or associated with, any criminal enterprise" a criminal offense that is "*independent of the conduct* required to commit [the underlying predicate offenses]." (Emphasis added.

1. When enacted, the federal RICO statute stated: "It is the purpose of this Act to seek the eradication of organized crime in the United States by . . . [among other things,] providing *enhanced sanctions* and new remedies to deal with the unlawful activities of those engaged in organized crime." (Emphasis added). *State v. Schlosser*, 79 Ohio St.3d 329, 332 (1997), quoting the Organized Crime Control Act of 1970, Statement of Findings and Purpose, 84 Stat. 922, reprinted in 1970 U.S.Code Cong. & Adm.News at 1073.

Bracketed text in original.) R.C. 2923.32(A)(1); *Miranda* at ¶ 13. It is because of this that the stated purposes of the RICO statute are not served by merging a RICO offense with any underlying charges it is based on. *Id.* at ¶ 14. But the same is not true here, where Ohio law requires both felonious assault and domestic violence be committed "knowingly," meaning neither statute imposes strict liability like Ohio's RICO statute. R.C. 2919.25(A); R.C. 2903.11(A)(1); R.C. 2923.32. Ultimately, the domestic violence statute's creation of protections for a particular class of people does not mean that it inherently provides enhanced or cumulative punishment for those who commit assault against that class of people. In contrast, Ohio's RICO statute expressly creates both a new class of offender *and* cumulative punishment for that class.

{¶ 14} For these reasons, we sustain Yusufi's sole assignment of error.

{¶ 15} Judgment reversed and remanded for proceedings consistent with this opinion.

HENDRICKSON and SIEBERT, JJ., concur.

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, reversed and remanded for further proceedings consistent with the above Opinion.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Matthew R. Byrne, Presiding Judge

/s/ Robert A. Hendrickson, Judge

/s/ Melena S. Siebert, Judge