**[Cite as *State v. Parrish*, 2023-Ohio-2409.]**

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

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| STATE OF OHIO | : | |
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| Appellee | : | C.A. No. 2022-CA-89 |
| | : | |
| v. | : | Trial Court Case No. 22-CR-286A |
| | : | |
| MATTHEW AUSTIN PARRISH | : | (Criminal Appeal from Common Pleas Court) |
| | : | |
| Appellant | : | |
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O P I N I O N

Rendered on July 14, 2023

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ANDREW P. PICKERING and AARON S. HESKETT, Attorneys for Appellee

JAY A. ADAMS, Attorney for Appellant

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TUCKER, J.

**{¶ 1}** Matthew Austin Parrish appeals from his conviction following a guilty plea to first-degree-felony charges of aggravated robbery and kidnapping.

**{¶ 2}** Parrish contends the record clearly and convincingly fails to support the trial court's imposition of consecutive sentences. He also asserts plain error predicated on the trial court's not merging aggravated robbery and kidnapping as allied offenses of similar

import. Finally, he alleges ineffective assistance of counsel based on his attorney's failure to raise the merger issue below.

**{¶ 3}** We conclude that the record does not clearly and convincingly fail to support consecutive sentences. We find no plain error because the trial court's failure to merge aggravated robbery and kidnapping was not an obvious error. Parrish also has failed to demonstrate ineffective assistance of counsel in connection with the merger issue. Accordingly, the trial court's judgment will be affirmed.

## I. Background

**{¶ 4}** A grand jury indicted Parrish on charges of aggravated robbery, kidnapping, and felonious assault. The charges involved Parrish and a female companion entering a gas-station convenience store to steal merchandise. While inside, they punched, kicked, and stomped the store clerk, causing bone fractures and other serious injuries. The beating continued intermittently for approximately 45 minutes as the two perpetrators dragged the victim around inside the store while filling bags with merchandise. The assault stopped only after a customer entered the store and alerted police, who interrupted the attack and arrested Parrish and his companion.

**{¶ 5}** Following his indictment, Parrish agreed to plead guilty to aggravated robbery and kidnapping in exchange for dismissal of the felonious-assault charge. The agreement also provided for the preparation of a presentence investigation (PSI) report. The trial court accepted the plea and entered a finding of guilt. The matter proceeded to sentencing on December 6, 2022. After reviewing the record, which included the PSI report, a victim-impact statement, letters on behalf of Parrish, and a security-camera video recording of

the incident, the trial court imposed consecutive, indeterminate prison sentences of 10 to 15 years for aggravated robbery and 8 to 12 years for kidnapping. The trial court stated that the aggregate minimum prison term would be 18 years and that the aggregate maximum term would be 23 years. This appeal followed.

## II. Consecutive Sentences

**{¶ 6}** The first of Parrish's three assignments of error challenges the trial court's imposition of consecutive sentences. It states:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN THE IMPOSITION OF SENTENCE UPON THE APPELLANT.

**{¶ 7}** As an initial matter, Parrish's assignment of error is incorrect insofar as it suggests applying abuse-of-discretion review to the trial court's consecutive-sentencing decision. *State v. Gwynne*, Ohio Slip Opinion No. 2022-Ohio-4607, __ N.E.3d __, ¶ 19 (observing that the appellate standard of review for consecutive sentences is not abuse of discretion).

**{¶ 8}** When reviewing felony sentences, we apply the standard of review set forth in R.C. 2953.08(G). *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 7. Under that statute, an appellate court may increase, reduce, or modify a sentence, or it may vacate the sentence and remand for resentencing, only if it clearly and convincingly finds either: (1) the record does not support the sentencing court's findings under certain enumerated statutes (including R.C. 2929.14(C)(4)), which addresses consecutive sentences); or (2) the sentence is otherwise contrary to law. *Id*. at ¶ 9, citing R.C. 2953.08(G)(2).

**{¶ 9}** A trial court may impose consecutive sentences under R.C. 2929.14(C)(4) if it finds that: (1) consecutive service is necessary to protect the public from future crime or to punish the offender; (2) consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) one or more of the following three findings is satisfied:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

R.C. 2929.14(C)(4)(a)-(c).

**{¶ 10}** "The first step in consecutive-sentence review is to ensure that the consecutive-sentence findings under R.C. 2929.14(C)(4) have been made – i.e., the first and second findings regarding necessity and proportionality, as well as the third required finding under R.C. 2929.14(C)(4)(a), (b), or (c)." *Gwynne* at ¶ 25. "If the trial court fails to make these findings, and that issue is properly raised on appeal, then the appellate court

must hold that the order of consecutive sentences is contrary to law and either modify the sentence or vacate it and remand the case for resentencing." *Id*. On the other hand, if the R.C. 2929.14(C)(4) consecutive-sentence findings have been made, we then must determine "whether the record clearly and convincingly supports those findings." *Id*. at ¶ 26. If a consecutive-sentence finding "is found not to be supported by the record under the clear-and-convincing standard provided by R.C. 2953.08(G)(2), then the trial court's order of consecutive sentences must be either modified or vacated[.]" *Id*.

**{¶ 11}** "An appellate court's review of the record and findings is de novo with the ultimate inquiry being whether it clearly and convincingly finds—in other words, has a firm conviction or belief—that the evidence in the record does not support the consecutive-sentence findings that the trial court made." *Id*. at ¶ 27. Clear and convincing evidence is that evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

**{¶ 12}** "When reviewing the record under the clear-and-convincing standard, the first core requirement is that there be some evidentiary support in the record for the consecutive-sentence findings that the trial court made." *Gwynne* at ¶ 28. For purposes of this review, the record includes any of the following: "written presentence, psychiatric, or other investigative reports submitted to the trial court prior to sentencing; the trial court record in the case in which the sentence was imposed; any oral or written statements made to or by the court at sentencing; and any written findings the court was required to make in connection with a grant of judicial release." *Id*. at ¶ 28, fn. 6, citing R.C.

2953.08(F)(1)-(4). We must "focus on both the quantity and quality of the evidence in the record that either supports or contradicts the consecutive-sentence findings." *Id*. at ¶ 29. We "may not, for example, presume that because the record contains some evidence relevant to and not inconsistent with the consecutive-sentence findings, that this evidence is enough to fully support the findings." *Id*. Indeed, "R.C. 2953.08(G)(2) explicitly rejects this type of deference to a trial court's consecutive-sentence findings." *Id*. Instead, an appellate court is "authorized to substitute its judgment for the trial court's judgment if the appellate court has a firm conviction or belief, after reviewing the entire record, that the evidence does not support the specific findings made by the trial court to impose consecutive sentences, which includes the number of consecutive terms and the aggregate sentence that results." *Id*.

**{¶ 13}** With the foregoing standards in mind, we turn to Parrish's sentences. His substantive argument challenging consecutive sentences is as follows:

> In the present case, appellant argues that none of the factors specifically required to be reviewed are set forth on the record in sufficient detail and with sufficient analysis in order to impose consecutive sentences in this cause. As the sentencing hearing and plea hearing both make clear, appellant was on ILC, which means that he did not have a felony record, or at least not a significant record which would have rendered him ILC ineligible. Moreover, there is no discussion on the record of the required findings in order to make a finding of consecutive sentences being necessary due to the nature of the offense and the disproportionate nature

> of the sentence imposed in this case. There was a genuine sense of remorse expressed by the defendant and it is clear that substance abuse disorder or abuse clearly led to his offense rather than an individual who was motivated by being criminally motivated. Further, if this Court were to take judicial notice of the sentence in the co-defendant's case, it is clear that [the trial court] imposed a sentence that was not consistent in this case (18 years) versus the co-defendant's case (10 years) given the very limited facts that are on the record and the limited nature of the recitation of the facts as it relates to the involvement of the co-defendants indicted in this case.

Appellant's Brief at 8-9.

**{¶ 14}** Upon review, we find no error in the trial court's consecutive-sentencing decision. As a threshold matter, the trial court made the findings required by R.C. 2929.14(C)(4) regarding the necessity and proportionality of consecutive sentences. With regard to R.C. 2929.14(C)(4)(a), (b), and (c), the trial court then determined that all three provisions applied to Parrish, even though the existence of any one of them was sufficient to impose consecutive sentences.

**{¶ 15}** As for whether the record supports the trial court's findings, Parrish first objects that none of the findings are set forth "in sufficient detail and with sufficient analysis" to support consecutive sentencing. He also objects to the lack of a "discussion on the record of the required findings in order to make a finding of consecutive sentences being necessary due to the nature of the offense and the disproportionate nature of the sentence imposed in this case." These arguments seem to imply that the trial court was

required to explain its decision or specifically justify its findings. But a trial court "has no obligation to state reasons to support its findings." *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

**{¶ 16}** Concerning Parrish's professed remorse, the trial court explicitly found "no genuine remorse." Sentencing Transcript at 15. After listening to Parrish and observing him, the trial court was well-positioned to make this finding. Parrish also cites substance abuse as the impetus for his offenses, as opposed to a desire to engage in criminal activity. It appears to us, however, that substance abuse may have contributed to a desire by Parrish to commit his offenses. In any event, the trial court addressed Parrish's substance abuse and found that he was not even making a sincere effort to become sober. The trial court cited his use of "fake urine" to pass drug tests and the fact that he was not "clean" despite having attended addiction classes. Parrish has not challenged these findings by the trial court.

**{¶ 17}** With regard to the sentence received by Parrish's female companion, the record contains no information about it. Even if we accept his claim that she received a minimum prison sentence of 10 years, this fact does nothing to establish the impropriety of his own consecutive sentences under the criteria found in R.C. 2929.14(C)(4). We also do not know whether Parrish's companion was similarly situated to him for sentencing purposes. The fact that they committed the same offenses does not by itself mandate the same sentences, as felony sentencing involves a multitude of considerations. We note too that the existence of different sentences just as easily might imply that Parrish's companion was under-sentenced rather than that Parrish did not deserve consecutive

sentences.

**{¶ 18}** The only other fact Parrish cites to support his challenge to consecutive sentences is his intervention-in-lieu-of-conviction (ILC) status. Parrish notes that he was on ILC when he committed the offenses at issue, suggesting that he did not have a significant criminal history. Indeed, the record reflects that Parrish had only a 2005 juvenile adjudication for theft and criminal damaging, a 2021 misdemeanor conviction as an adult for obstructing official business, and a 2021 felony case involving improper handling of a firearm in a motor vehicle for which he was on ILC when he committed the aggravated robbery and kidnapping.

**{¶ 19}** Despite Parrish's relatively modest criminal record, the record does not clearly and convincingly fail to support the trial court's imposition of consecutive sentences. Given the brazen, brutal, and prolonged nature of the assault against a defenseless store clerk depicted on the store's security-camera recording, the record supports the trial court's findings that consecutive sentences are necessary to protect the public from future crime and to punish Parrish. Although these were alternative findings and only one of them was required, the record supports the trial court's determination that they both applied. The video recording also supported the trial court's findings that consecutive sentences were not disproportionate to the seriousness of Parrish's conduct and the danger he posed to the public.

**{¶ 20}** In opposition to the foregoing conclusion, Parrish questions whether the video was made part of the record or was viewed by the trial court. We note, however, that a copy of the recording was filed with the PSI report. The trial court also stated during

the sentencing hearing that it "did watch the video." Sentencing Transcript at 11. During the sentencing hearing, the trial court described a portion of what it had seen:

> And as the prosecutor's already pointed out, up to 45 minutes, the two of them beat the [clerk] senseless, kicking him about the body and his head. He would try to get up. He kept falling back down. He was dragged from one location to the other, at first it appeared just to get him out of sight in case anybody comes to the window, to the door.
>
> He was constantly being threatened by the defendant. There is no audio. You couldn't hear what he was saying, but it appeared he was saying stop moving, stay put. He was trying to move and just kept getting beat on.
>
> * * * They went from taking a few, well, maybe 10, 20 packages of cigarettes to grabbing plastic bags and filling them with whatever they could grab, knocking things over. I don't know how long it would have been, it went on at least until they got all the material that they wanted.
>
> Fortunately, there was another customer that came in, saw what went on behind the counter area, left immediately to call the police; and this defendant and his codefendant, I don't know if it was a matter of greed, but it may have been quite possibly because they were both high and drunk and decided to get more and more stuff, but they were still there when the police arrived.
>
> But to try to write this off with being in the wrong place at the wrong time with the wrong person demeans the act, demeans the defendant [sic]—

> demeans the victim. There was an attempt to get away from all the liability and responsibility that belongs on this defendant's shoulders.

Sentencing Transcript at 12-14.

**{¶ 21}** Finally, although Parrish does not specifically address the issue, the record also supports the trial court's finding under R.C. 2929.14(C)(4)(b), which authorizes consecutive sentences where "at least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct."

**{¶ 22}** Particularly absent any argument from Parrish, we have no trouble concluding that his offenses were part of the same course of conduct. We have recognized that a course of conduct exists where two offenses share "some connection" or "common scheme." *State v. Ingram*, 2d Dist. Clark Nos. 2022-CA-75, 2022-CA-76, 2023-Ohio-1998, ¶ 23. A course of conduct may involve related acts linked by time, location, similar motivation or other factors. *Id*. Here Parrish's offenses of aggravated robbery and kidnapping had some connection, as they were linked by time, location, and arguably a similar motivation.

**{¶ 23}** Finally, the trial court reasonably could have concluded that the harm caused by the aggravated robbery and kidnapping, which involved punching, kicking, and stomping the clerk as the perpetrators dragged him around the store, was so great or unusual that no single prison term would suffice. The record reflects that the attack

resulted in broken bones, broken teeth, and a brain bleed. A victim-impact statement reflects that the clerk's life had been changed "forever." The clerk, an immigrant who moved from New York to Springfield and started his own business at the gas-station convenience store, reported continuing to experience high anxiety, weakness, and recurring nightmares as a result of the attack. In our view, this evidence was more than adequate to support the imposition of consecutive sentences under R.C. 2929.14(C)(4)(b).

**{¶ 24}** Having determined that the record supports the trial court's finding under R.C. 2929.14(C)(4)(b), we need not decide whether it also supports the trial court's additional findings under R.C. 2929.14(C)(4)(a) based on Parrish's ILC status at the time of the offenses or under R.C. 2929.14(C)(4)(c) predicated on his criminal history. To impose consecutive sentences, only one of the three potential findings under R.C. 2929.14(C)(4)(a), (b), and (c) was required.

**{¶ 25}** In short, the trial court made the necessary findings for consecutive sentences, and the record does not clearly and convincingly fail to support those findings. As a result, the trial court did not err in imposing consecutive sentences for aggravated robbery and kidnapping. The first assignment of error is overruled.

### III. Merger of Allied Offenses of Similar Import

**{¶ 26}** Parrish's second and third assignments of error state:

> THE TRIAL COURT ERRED AND COMMITTED PLAIN ERROR AND VIOLATED APPELLANT'S FIFTH AMENDMENT RIGHTS IN THE FAILURE TO MERGE ALLIED OFFENSES.

APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AS REQUIRED BY THE OHIO AND UNITED STATES CONSTITUTION.

**{¶ 27}** In his second and third assignments of error, Parrish challenges the trial court's failure to merge aggravated robbery and kidnapping as allied offenses of similar import. As he did not raise the merger issue below, Parrish's second assignment of error advances a plain-error argument whereas his third assignment of error alleges ineffective assistance of counsel for not arguing merger in the trial court.

**{¶ 28}** Preliminarily, we note that this is not a case where the parties' plea agreement included a stipulation that merger did not apply. The agreement is silent regarding the issue, and we see nothing that would have precluded defense counsel from advocating for merger of the two offenses at sentencing. Nevertheless, we are unpersuaded that counsel's failure to argue merger below constituted plain error.

**{¶ 29}** To prevail under the plain-error doctrine, a defendant must establish "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." *State v. McAlpin*, 169 Ohio St.3d 279, 2022-Ohio-1567, 204 N.E.3d 459, ¶ 66, quoting *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 22. "The elements of the plain-error doctrine are conjunctive: all three must apply to justify an appellate court's intervention." *State v. Bailey*, Ohio Slip Opinion No. 2022-Ohio-4407, __ N.E.3d __, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

**{¶ 30}** In *Bailey*, the Ohio Supreme Court reiterated the test recited in *State v.*

*Earley*, 145 Ohio St.3d 281, 2015-Ohio-4615, 49 N.E.3d 266, to determine whether offenses are subject to merger under R.C. 2941.25. Under that test, "courts must ask three questions when [a] 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." *Earley* at ¶ 12, quoting *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 31.

**{¶ 31}** "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." *Bailey* at ¶ 11. In *Bailey*, the Ohio Supreme Court considered whether kidnapping and rape were allied offenses subject to merger. The issue was whether kidnapping was merely incidental to rape where the defendant forced his victim to walk a block to a parking garage while informing her that he intended to rape her there and then actually doing so. The *Bailey* court recognized that de novo review applied because the outcome "involved a legal determination premised on [a] specific set of facts[.]" *Id*. at ¶ 13. The Ohio Supreme Court noted, however, that "[t]he second element of the plain-error test requires the error to be obvious." *Id*. at ¶ 13. Notwithstanding application of de novo review, the *Bailey* court held that plain error did not exist because failure to merge the two offenses was not "obvious" error. It reasoned:

> The second element of the plain-error test requires the error to be obvious. The trial court concluded that Bailey's motivation for making the

> victim walk to the parking garage was not incidental to the rape; the First District concluded that it was. Even if we were to assume that the trial court erred by not merging the kidnapping and rape counts, the facts of the case indicate that such an error was not obvious.

*Id*. at ¶ 14.

**{¶ 32}** We reach the same conclusion here. As *Bailey* recognized, proper application of R.C. 2941.25 can be difficult as it often involves fine factual distinctions. *Id*. at ¶ 11, 16. We find that to be true in Parrish's case, which does not involve any obvious error regarding the failure to merge aggravated robbery and kidnapping. Parrish and his companion restrained the store clerk's freedom and dragged the clerk around the store for approximately 45 minutes while filling bags with merchandise they intended to steal. They also repeatedly punched, kicked, and stomped the clerk, primarily when the clerk attempted to resist or rise to his feet during the robbery. The issue raised in Parrish's appellate brief regarding merger concerns whether the perpetrators' restraint and movement of the clerk was indicative of a separate animus. Having considered this issue, we see no obvious error in the trial court's failure to apply the merger doctrine. Therefore, Parrish has not established plain error. The second assignment of error is overruled.

**{¶ 33}** Parrish's third assignment takes a different tactical approach to the same issue. He alleges ineffective assistance of counsel based on his attorney's failure to seek merger below. In support, he incorporates the substantive argument presented under his second assignment of error. *See* Appellant's Brief at 13 ("Given the foregoing arguments in appellant's second assignment of error, it is clear that counsel's performance was

deficient.”).

**{¶ 34}** Under his second assignment of error, Parrish cites *State v. Rance*, 85 Ohio St.3d 632, 710 N.E.2d 699 (1999), for the proposition that the elements of aggravated robbery and kidnapping must be compared in the abstract to determine whether commission of one offense necessarily will result in commission of the other. Applying the *Rance* test, Parrish insists that the elements of aggravated robbery and kidnapping do correspond to such a degree that they are allied offenses because a kidnapping necessarily is implicit in every robbery. Based on that premise, the only element of the allied offense test set forth above that Parrish specifically addresses is whether a separate animus existed for his offenses. He argues that his sole animus, or immediate motive, was to steal from the store and that the restraint and movement of the victim was incidental to the aggravated robbery. Therefore, he argues that merger was required and that his attorney provided ineffective assistance by not seeking it.

**{¶ 35}** We review alleged instances of ineffective assistance of trial counsel under the two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), which was adopted by the Ohio Supreme Court in *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). To prevail on an ineffective-assistance claim, a defendant must show that trial counsel rendered deficient performance and that counsel’s deficient performance prejudiced him. *Strickland* at paragraph two of the syllabus; *Bradley* at paragraph two of the syllabus. The failure to make a showing of either deficient performance or prejudice defeats an ineffective-assistance claim. *Strickland* at 697.

**{¶ 36}** To establish deficient performance, a defendant must show that his trial counsel's performance fell below an objective standard of reasonable representation. *Id*. at 688. In evaluating counsel's performance, a reviewing court "must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id*. at 689. "The adequacy of counsel's performance must be viewed in light of all of the circumstances surrounding the trial court proceedings." *State v. Jackson*, 2d Dist. Champaign No. 2004-CA-24, 2005-Ohio-6143, ¶ 29. To establish prejudice, a defendant must show that there is "a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 204, citing *Strickland* at 687-688 and *Bradley* at paragraph two of the syllabus. " 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Bradley* at 142, quoting *Strickland* at 694.

**{¶ 37}** With the foregoing standards in mind, we conclude that Parrish has not demonstrated ineffective assistance of counsel. As explained above, the test for determining whether allied offenses of similar import exist requires consideration of three issues: (1) whether the offenses were committed separately; (2) whether they were of dissimilar import or significance; and (3) whether they were committed with a separate animus or motivation. "The conduct, the animus, and the import all must be considered." *Bailey* at ¶ 10, quoting *Earley,* 145 Ohio St.3d 281, 2015-Ohio-4615, 49 N.E.3d 266, at ¶ 12.

**{¶ 38}** When considering whether two offenses are subject to merger, we do not review the elements in the abstract to determine whether commission of one offense

automatically will result in commission of the other. Parrish adopts this approach, asserts that allied offenses exist, and proceeds to the "separate animus" issue, which is the only element of the tri-part allied-offense test that his brief addresses. But the case he cites to urge comparison of the elements of his offenses in the abstract, *Rance*, was overruled by the Ohio Supreme Court in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, which itself has been rendered "largely obsolete" over the years. *Earley* at ¶ 11, citing *Ruff* at ¶ 16.

**{¶ 39}** Under the current test, we consider whether two offenses involve the same conduct based on the facts of a case, not in the abstract. We also consider whether the offenses share the same import or significance, which in a single-victim case involves determining whether the harm caused by one offense is separate and identifiable from the harm caused by the other offense. *Ruff* at ¶ 26. Finally, we must consider whether a defendant acted with the same animus, which means "purpose" or "immediate motive." *State v. Crossley*, 2020-Ohio-6639, 164 N.E.3d 585, ¶ 23 (2d Dist.). Although Parrish's appellate brief argues the "animus" issue, he fails to address the other two elements of the allied-offense test under R.C. 2941.25. Relying on *Rance*, he simply reasons: "[G]iven that kidnapping and aggravated robbery are allied offenses of similar import, and because appellant did not commit the two crimes with a separate animus, he could only be convicted of and sentenced for one of those crimes." *See* Appellant's Brief at 12.

**{¶ 40}** But determining whether aggravated robbery and kidnapping in fact *are* allied offenses of similar import in this case demands careful analysis of whether each offense involved at least some separate conduct and whether each offense involved the

infliction of at least some separate and identifiable harm. Based on our review of the security-camera footage, resolution of these issues in Parrish's case is difficult. As noted above, Parrish and his companion were inside the store for roughly 45 minutes. They viciously punched, kicked, and stomped the clerk many times as they filled bags with merchandise. They also dragged the clerk to various locations inside the store, including a center aisle away from the window, the rear of the store, and an area near the cash register.

**{¶ 41}** Although the restraint on the clerk's freedom of movement was prolonged, the robbery itself also was prolonged, and much of the restraint may have facilitated the robbery. Absent any specific argument from Parrish, however, we decline sua sponte to parse the video recording of his conduct and the harm suffered by the victim to determine whether the aggravated robbery and kidnapping to some extent were committed separately or whether the offenses were of dissimilar import or significance. While some restraint is implicit in every robbery, it is not readily apparent that the degree of restraint and movement of the victim here necessarily had no significance independent of the aggravated robbery. Nor is it apparent that the aggravated robbery and the kidnapping necessarily involved identical harm to the victim. Unfortunately, Parrish has not even addressed these issues. Absent any argument from him on these key questions, we find no reasonable probability that the result would have been different below if defense counsel had raised the merger issue. Given that Parrish's appellate brief presumes the existence of allied offenses based on *Rance* and addresses only the "animus" issue, we conclude that ineffective assistance of counsel has not been demonstrated. Accordingly,

the third assignment of error is overruled.

## IV. Conclusion

**{¶ 42}** The judgment of the Clark County Common Pleas Court is affirmed.

. . . . . .

EPLEY, J. and HUFFMAN, J., concur.