[Cite as *State v. Schuler*, 2026-Ohio-4403.]

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

STATE OF OHIO	:	
	:	C.A. No. 30791
Appellee	:	
	:	Trial Court Case No. 2025 CR 00462
v.	:	
	:	(Criminal Appeal from Common Pleas
BERNARD SCHULER	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on November 6, 2026, the judgment of the trial court is reversed and remanded for the sole purpose of resentencing and affirmed in all other aspects.

Costs to be paid as stated follows: 50% by the Appellant and 50% by the Appellee.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



CHRISTOPHER B. EPLEY, JUDGE

LEWIS, P.J., concurs.

HUFFMAN, J., concurs in judgment only.

OPINION
MONTGOMERY C.A. No. 30791

CHRISTOPHER BAZELEY, Attorney for Appellant
MICHAEL P. ALLEN, Attorney for Appellee

EPLEY, J.

{¶ 1} Bernard Schuler appeals from the judgment of the Montgomery County Common Pleas Court, imposing a sentence of 42 to 47.5 years in prison for aggravated robbery, felonious assault, abduction, kidnapping, and having weapons while under disability.

{¶ 2} Schuler asserts that the trial court failed to make the findings required under R.C. 2929.14(C) before imposing consecutive sentences. The State concedes error as to the failure of the trial court to make these findings, and further notes that the trial court failed to advise Schuler of the indeterminate sentences required on Counts IV (felonious assault) and VII (kidnapping) under the Reagan Tokes Law. Additionally, Schuler asserts that the trial court erred by failing to merge Schuler's conviction for kidnapping (fleeing/felony) with his convictions for aggravated robbery or theft.

{¶ 3} For the following reasons, the trial court's judgment is reversed in part, and the matter is remanded for the sole purpose of making the proper advisements to Schuler under R.C. 2929.14(C) regarding the imposition of consecutive prison terms and for indeterminate sentences on Count IV and VII. In all other respects, the judgment is affirmed.

I. Facts and Procedural History

{¶ 4} On the night of February 10, 2025, Schuler forced himself into the residence of a 75-year-old man, D.P. After D.P. gave Schuler some water, Schuler put a firearm to D.P.'s head and demanded money. When D.P. stated that he had no money, Schuler began to

pistol whip him before forcing D.P. to walk to his bedroom at gunpoint. Schuler then took cash, as well as credit and bank cards belonging to D.P., and demanded that D.P. tell him the security codes for the cards. Before leaving, Schuler smothered D.P. with a pillow until he lost consciousness and bound his arms, legs, face, and head with duct tape. Eventually, D.P. regained consciousness and was able to free himself and contact police.

{¶ 5} On February 25, 2025, Schuler was indicted on two counts each of aggravated robbery (Counts I and II), felonious assault (Counts III and IV), abduction (Counts V and VI), kidnapping (Counts VII and VIII), and theft (Counts XII and XIII), as well as one count each of grand theft (Count IX), having weapons while under disability (Count X), and disrupting public services (Count XI). Counts I, II, III, and IV included firearm specifications.

{¶ 6} A jury trial began on February 18, 2026, after which Schuler was found guilty of 11 of the 13 counts; the jury found him not guilty of Counts VIII and XII. During the March 10, 2026 sentencing hearing, the trial court merged Count VI abduction (restrain) with Count VII kidnapping (felony or flight), with the State electing to proceed to sentencing on Count VII. Additionally, the trial court merged Counts I aggravated robbery (deadly weapon), II aggravated robbery (serious harm), IX grand theft (motor vehicle), XI disrupting public services (communications), and XIII theft (elderly/disabled person) together, with the State electing to proceed to sentencing on Count I. Lastly, the trial court merged Counts III felonious assault (serious physical harm) and IV felonious assault (deadly weapon), with sentencing to proceed on Count IV. Count V abduction did not merge.

{¶ 7} The trial court sentenced Schuler to 11 to 16.5 years in prison on Count I, 8 years on Count IV, 36 months on Count V, 11 years on Count VII, and 36 months on Count X. Additionally, the trial court imposed the mandatory 3-year firearm specifications on the

aggravated robbery (Count I) and felonious assault (Count IV) offenses and ordered that all sentences be served consecutively.

{¶ 8} Schuler now appeals his conviction, raising two assignments of error. We address them in reverse order.

II. Failure to Merge Count VII With Count I Was Not Plain Error

{¶ 9} In his second assignment of error, Schuler asserts that the trial court erred by failing to merge Count VII kidnapping (felony or flight) with Count I aggravated robbery (deadly weapon). Schuler further contends that, alternatively, Count VII could have merged with the theft offense in Count XIII, which was merged with Count I.

{¶ 10} Pursuant to R.C. 2941.25, the allied offenses statute:

> (A) Where the same conduct by [a] 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.
>
> (B) Where 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, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

"This statute implements the protections of the Double Jeopardy Clauses of the United States and Ohio Constitutions, which prohibit a second punishment for the same offense." *State v. Frazier*, 2021-Ohio-4155, ¶ 18 (2d Dist.).

{¶ 11} When determining whether offenses constitute allied offenses of similar import, courts must ask the following questions: "(1) Were the offenses dissimilar in import

or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation?" *State v. Ruff*, 2015-Ohio-995, ¶ 31. "An affirmative answer to any of the above will permit separate convictions. The conduct, animus, and the import must all be considered." *Id.* "[T]he analysis must focus on the defendant's conduct to determine whether one or more convictions may result, because an offense may be committed in a variety of ways and the offenses committed may have different import." *Id.* at ¶ 30. "No bright-line rule can govern every situation." *Id.*

{¶ 12} "Kidnapping and other crimes are not always allied offenses subject to merger because they can involve distinct acts; even when they involve the same conduct, the crimes can have a separate animus." *State v. Farra*, 2022-Ohio-1421, ¶ 70 (2d Dist.). Establishing a separate animus for kidnapping requires (1) restraint that is prolonged, secretive, or movement so substantial that it demonstrates significant independence from the other offense, or (2) restraint that subjects the victim to a significantly increased risk of harm that is separate and apart from the harm associated with the underlying offense. *Id.*

{¶ 13} Generally, we review the issue of whether allied offenses were properly merged de novo. *State v. Murray*, 2022-Ohio-3660, ¶ 9 (2d Dist.). However, when a defendant fails to raise an allied-offense argument in the trial court, our review is limited to plain error. *State v. Cox*, 2013-Ohio-301, ¶ 7 (2d Dist.). Schuler did not object to or raise any other issue with the trial court's merger of allied offenses during trial or at the sentencing hearing and, therefore, we will review for plain error.

{¶ 14} "Under the plain error doctrine, intervention by a reviewing court is warranted only under exceptional circumstances to prevent injustice." *State v. Bailey*, 2022-Ohio-4407, ¶ 8. To prevail, Schuler must establish the existence of an error, that the error was obvious, and that the error affected his substantial rights. *State v. Bradley*, 2026-Ohio-3771, ¶ 15.

"The elements of the plain-error doctrine are conjunctive: all three must apply to justify an appellate court's intervention." *Bailey* at ¶ 9.

{¶ 15} With respect to the merger of Count VII kidnapping (felony or flight) with Count I aggravated robbery (deadly weapon), the offenses were dissimilar in import and significance. Specifically, Schuler's conviction for kidnapping was based on his movement of D.P. from the living room to the bedroom and his restraint of D.P.'s liberty to allow Schuler to escape following the aggravated robbery. Schuler's restraint of D.P. also subjected D.P. to an increased risk of harm, separate from that associated with the aggravated robbery, when he put a pillow over D.P.'s face until he lost consciousness. This was not necessary for the commission of the aggravated robbery or flight following the offense, as D.P. had already told Schuler where his valuables were and he was already restrained from preventing Schuler's escape. Conversely, his conviction for aggravated robbery arose out of Schuler's theft of D.P.'s belongings while brandishing a firearm.

{¶ 16} The trial court did not err when it failed to merge Count VII kidnapping (felony or flight) with Count I aggravated robbery, or the theft offense that merged into Count I. Because Schuler has failed to demonstrate all three requirements for plain error, our intervention is not appropriate.

{¶ 17} Schuler's second assignment of error is overruled.

III. R.C. 2929.14 Findings Regarding Consecutive Sentences

{¶ 18} In his first assignment of error, Schuler asserts that the trial court failed to make the required findings under R.C. 2929.14(C) before imposing consecutive sentences. The State agrees that the trial court's advisements to Schuler were likely insufficient and further notes that the trial court failed to impose indefinite sentences under Reagan Tokes on Counts IV and VII, as required. The State acknowledges, however, that there should be no

change to Schuler's aggregate sentence. The State agrees with Schuler that this matter should be remanded for the limited purpose of resentencing. We likewise agree.

{¶ 19} The trial court may require a defendant to serve multiple prison terms consecutively "if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public . . . ." *See* R.C. 2929.14(C)(4). Further, "[w]hen imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing . . . ." *State v. Bonnell*, 2014-Ohio-3177, ¶ 29.

{¶ 20} Although the trial court vaguely referenced Schuler's criminal history and the fact that he was a danger to the public, it did not specifically or fully reference the findings required under R.C. 2929.14(C)(4) before ordering that Schuler's sentences be served consecutively. Therefore, we agree with the parties that this matter should be remanded for resentencing. At that time, the trial court should also make clear that the terms for Counts IV and VII are stated minimum sentences under Reagan Tokes, not definite sentences. *See State v. Norman*, 2026-Ohio-761, ¶ 11 (2d Dist.).

{¶ 21} Schuler's first assignment of error is sustained.

IV. Conclusion

{¶ 22} The trial court's sentence is reversed, and this matter is remanded for the limited purpose of resentencing to comply with R.C. 2929.14(C) and the applicable provisions of the Reagan Tokes Law. In all other respects, the trial court's judgment is affirmed.

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LEWIS, P.J., concurs.

HUFFMAN, J., concurs in judgment only.