[Cite as *State v. Wisor*, 2026-Ohio-248.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STATE OF OHIO,	:	
	:	Case No. 25CA6
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
NAKEDA M. WISOR,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 01/16/2026**

APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for appellant.

Nicole Coil, Washington County Prosecuting Attorney, and Daniel W. Everson, Assistant Washington County Prosecuting Attorney, Marietta, Ohio, for appellee.

Wilkin, J.

{1} This is an appeal of a Washington County Court of Common Pleas judgment entry in which Nakeda M. Wisor ("Wisor") was convicted of burglary, a second-degree felony, and grand theft, a fourth-degree felony. On appeal Wisor contends the trial court erred when it did not merge the offenses of burglary and theft, as she asserts they are allied offenses of similar import that require merger. After reviewing the parties' arguments, the record, and the applicable law, we find no merit to the assignment of error and affirm the judgment of the trial court.

BACKGROUND

{2} On or about April 20, 2024, Wisor, along with two other persons, entered a home and stole jewelry and other items without the consent of the owner. On June 12, 2024, a Washington County grand jury returned a three-

count indictment regarding the incident. Two counts pertained to Wisor: Count 1, burglary, in violation of R.C. 2911.12(A)(2) and (D), a second-degree felony and Count 2, grand theft, in violation of R.C. 2913.02(A)(1) and (B)(2), a fourth-degree felony, with the indictment to further allege that the property stolen was valued at between $7,500 and $150,000.

{3} Wisor plead guilty to both counts as charged in the indictment on October 25, 2024. The indictment listed B.C. as the victim of the burglary and grand theft offenses. During the plea hearing, the State presented a statement of facts for the trial court, indicating that Wisor's conduct impacted two victims: B.C. and her daughter, K.C. The State also expressed an intention to present information regarding each victim at sentencing. The trial court ordered a PSI and a victim impact statement.

{4} On January 3, 2025, the trial court held a sentencing hearing. Present at sentencing was victim K.C., who provided a victim's impact statement written by her mother, which included the harm to both victims. When describing the incident, the State explained that some of the items taken by Wisor belonged to both K.C. and B.C. The State read the impact statement to the trial court during the sentencing. It became apparent that B.C. owned the home that had been burglarized. B.C. was not home at the time--she was receiving physical therapy for a knee replacement. That night at midnight, K.C. called B.C. with "panic" in her voice. K.C. told B.C. that the house was completely ransacked, and the back door had been kicked in. All the valuable items that B.C. and her husband had worked for were gone, causing B.C. to feel a "pit" in her stomach. Many things

that were missing were "not replaceable." B.C. explained that since that night, she had not been able to sleep without the lights on, which caused her to increase her anxiety medication. The State also explained that the value of the items taken in the case was an agreed-upon amount in excess of $52,000.

{5} At the hearing, the State opined:

> STATE: Obviously, there's some question about whether the theft merges with the [b]urglary, or whether it's a lesser included. So to protect the record, and to ensure that this doesn't come back on appeal for any reason, the [S]tate is asking, based on what [B.C.] – both [B.C.] and [K.C.] is asking for eight years in this instance.

The State went on to point to certain factors that supported its request that Wisor receive an eight-year sentence. Then, Wisor's trial counsel made arguments on her behalf. During those arguments, her counsel pointed out: "As far as merger goes, I can't imagine these two counts not merging. Count one is [b]urglary. The predicate offense there was the theft. We believe these two counts merge." Her counsel then went on to request a sentence in the lower range, with Wisor receiving further alcohol and drug treatment.

{6} After hearing from both parties, the trial court made certain findings and considered various factors. The trial court then stated, "I'm going to take away the merger issue, because the sentences that I'm going to impose will run concurrently. So – not consecutively." The trial court then sentenced Wisor to a term of 6-9 years in prison on the burglary offense, with a 12-month sentence on the theft offense, to run concurrently. The January 31, 2025 sentencing entry stated a prison term of 6-9 years. The trial court merged neither offense.

{7} On February 18, 2025, Wisor filed a timely notice of appeal, with a sole assignment of error.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED TO THE PREJUDICE OF MS. WISOR BY FAILING TO MERGE ALLIED OFFENSES OF SIMILAR IMPORT AT THE TIME OF SENTENCING

{8} In her sole assignment of error, Wisor claims that the trial court erred by not merging her convictions for burglary and grand theft because they were allied offenses of similar import. In so doing, Wisor states that the trial court did not conduct a required analysis of whether the offenses should merge, but, instead, simply ordered that the sentences be run concurrently. She asserts that imposing concurrent sentences does not equate to merging allied offenses. She further suggests that the proper analysis for determining the merger of allied offenses of similar import is found in *State v. Ruff,* 2015-Ohio-995. She also addresses those factors to reason that the offenses merge.

{9} The State responds that burglary and grand theft are not allied offenses of similar import in the abstract and should not have merged during sentencing in this case. The State emphasizes the "separate harm" prong of *Ruff* requires courts to consider whether there was harm to separate victims and/or whether the record suggests distinct harm to the same victim from the burglary offense as opposed to the theft offense. The State goes on to argue that even if the trial court was mistaken in ruling that the imposition of concurrent sentences resolves any merger issue, the trial court still properly sentenced Wisor. In so doing, the State argues that the record of the sentencing hearing

demonstrates the nature of Wisor's conduct, the number and identity of the victims involved in the incident, and the impact of Wisor's conduct—in essence detailing the harm suffered by both victims, the one present at sentencing and the one who participated via a victim's impact statement. In sum, the State essentially contends that merger is inappropriate for two reasons as it relates to the first prong of *Ruff*—(1) the fact there were clearly separate victims who each suffered harm and (2) the harm suffered from the burglary was distinct from the harm suffered from the theft.

{10} The State further contends merger was inappropriate for a third reason, as well, because, although forming part of one single course of conduct, the offenses of burglary and theft were committed separately. The State argues the burglary was completed at the point of entry into the home, such that the intent of committing another offense, which is an underlying offense of burglary, is not the same element of the offense as grand theft because theft involves intent plus the actual taking of the property.

A. Law

{11} "The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall 'be subject for the same offence to be twice put in jeopardy of life or limb.' " *State v. Bontrager,* 2022-Ohio-1367, ¶ 10 (4th Dist.). Thus, "[t]he Double Jeopardy Clause of the Fifth Amendment to the United States Constitution affords protections against the imposition of multiple criminal punishments for the same offense." *State v. Rogers*, 2015-Ohio-2459, ¶ 16, citing *Hudson v. United States*, 522 U.S. 93, 99 (1997). "This

protection applies to Ohio citizens through the Fourteenth Amendment to the United States Constitution * * * and is additionally guaranteed by the Ohio Constitution, Article I, Section 10." *Bontrager* at ¶ 10, quoting *State v. Ruff*, 2015-Ohio-995, ¶ 10.

{12} The prohibition against multiple punishments is codified in R.C. 2941.25, which provides:

> (A) Where 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 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.

{13} "R.C. 2941.25(A) clearly provides that there may be only *one conviction* for allied offenses of similar import." (Emphasis in original.) *State v. Underwood,* 2010-Ohio-1, ¶ 26. This principle prevents a trial court from imposing individual sentences for counts that constitute allied offenses of similar import. *State v. Williams*, 2016-Ohio-7658, ¶ 27, citing *Underwood* at ¶ 26. Hence, "the imposition of concurrent sentences is not the equivalent of merging allied offenses." *State v. Daboni*, 2020-Ohio-832, ¶ 13 (4th Dist.), citing *Williams* at ¶ 3.

{14} The Supreme Court of Ohio has further explained that

> when determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25, courts must ask three questions when the 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.

State v. Ruff, 2015-Ohio-995, ¶ 31.

{15} "Two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at paragraph two of the syllabus. "Offenses are committed separately within the meaning of R.C. 2941.25(B) if one offense is completed before the other offense occurs." *State v. Fisher*, 2023-Ohio-2088, ¶ 21 (6th Dist.), citing *State v. Turner*, 2011-Ohio-6714, ¶ 24 (2d Dist.).

{16} "The sentencing court has a mandatory duty to merge allied offenses of similar import." *State v. Riggens,* 2025-Ohio-3028, ¶ 12 (4th Dist.), quoting *State v. Bontrager*, 2022-Ohio-1367, ¶ 12 (4th Dist.), citing *State v. Stapleton*, 2020-Ohio-4479, ¶ 50 (4th Dist.). "A sentence which includes multiple counts of allied offenses of similar import is not authorized by law." *Riggens* at ¶ 12, quoting *State v. Underwood*, 2010-Ohio-1, ¶ 1 However, "[t]he defendant bears the burden of establishing his entitlement to the protection, provided by R.C. 2941.25, against multiple punishments for a single criminal act." *Riggens* at ¶ 13, quoting *State v. Mughni*, 33 Ohio St.3d 65, 67 (1987).

{17} We review de novo the trial court's merger determination of allied offenses. *State v. McKenzie,* 2025-Ohio-415, ¶ 59 (4th Dist.), citing *State v. Williams*, 2012-Ohio-5699, ¶ 1. "Thus, as an appellate court, we " ' "independently determine, without deference to the conclusion of the trial

court, whether the facts satisfy the applicable legal standard." ' "*McKenzie* at ¶ 59, quoting *Williams* at ¶ 1, quoting *State v. Burnside,* 2003-Ohio-5372, ¶ 8. " '[W]hen deciding whether to merge multiple offenses at sentencing pursuant to R.C. 2941.25, a court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus.' " *Id.*, quoting *State v. Washington*, 2013-Ohio-4982, ¶ 24.

B. Analysis.

{18} First, we address the question, as explained in *Ruff,* which determines whether offenses are of dissimilar import "when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Ruff* at paragraph two of the syllabus. The question is, "[w]ere the offenses dissimilar in import or significance?" *Id.* at ¶ 13.

{19} Specifically, "when applying the *Ruff* test, we look at the conduct of the defendant in the context of the statutory elements." *State v. Gillman,* 2025-Ohio-4421, ¶ 21 (4th Dist.), citing *State v. Bailey,* 2015-Ohio-2997, ¶ 82 (1st Dist.). In the instant case, Wisor was indicted for burglary and theft. The relevant burglary statute, R.C. 2911.12(A)(2), provides that: "[n]o person, by force, stealth, or deception, shall * * * [t]respass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose

to commit in the habitation any criminal offense." Wisor also plead to grand theft, a violation of R.C. 2913.02(A)(1), which provides "[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property * * * [w]ithout the consent of the owner or person authorized to give consent[.]" In addition, according to the statute in effect at the time, if the value of the property stolen is $7,500 or more and is less than $150,000 the offense is grand theft, a fourth-degree felony.

{20} The first part of this question involves examining whether Wisor's conduct constituted offenses involving separate victims. Wisor asserts that both victims K.C. and B.C. were lumped into one single charge. The State, on the other hand, asserts that the record establishes that two persons were victimized. Here, we concern ourselves with two counts, and it is unclear as to whether each victim was the victim of each offense. For example, it is difficult to parse out whether K.C. was a victim of both the burglary and theft offenses. However, we are not just examining whether there are separate or different victims of the burglary offense from the theft offense. In addition, we must also analyze whether the *harm* that results from each offense is separate and identifiable. Even though the trial court did not do this specific analysis, a statement of facts was made a part of the record during the plea hearing. At the sentencing hearing, the State read a victim's impact statement to the trial court. This should aid in our determination as to whether the harm that resulted from the theft offense is separate and identifiable from the harm that resulted from the burglary offense.

{21} B.C. explained that K.C. had "panic" in her voice arising from the event. B.C. also described the mental impact coming from the violation of her privacy and feeling of safety in her own home. B.C. also referred to the physical harm to property that resulted to the structure when the door was kicked in. This relates to the harm that resulted from the burglary offense. B.C. further expounded upon the economic damage she suffered from the offense, explaining that items she and her husband had worked for their entire lives were stolen, many of which were irreplaceable. The economic damage relates to the harm that resulted from the theft offense. Additionally, B.C. expressed that her home had been ransacked. That harm seems to incorporate both the burglary and the theft offenses. We find that B.C.'s victim impact statement and the statement of facts identified separate harm resulting from the burglary offense than the harm that resulted from the theft offense. Hence, the answer to whether the harm from each offense is separate and identifiable is "yes." *See, State v. Gillman,* 2015-Ohio-4421, ¶ 21-24 (4th Dist.) (where burglary and grand theft did not merge because of separate harm). In sum, the victims' sense of privacy had been invaded and compromised in addition to the structure exhibiting physical damage which constituted the harm resulting from the burglary offense, and the victim suffered economic loss as a result of the theft offense. *See State v. Conrad*, 2019-Ohio-263, ¶ 38 (4th Dist.) (acknowledging and not departing from *Gillman* which explained that burglary and theft are not allied offenses because the harm from each offense is separate and identifiable).

{22} Because we answer affirmatively the first question in the *Ruff*, we do not need to conduct further analysis. In the instant case, when applying the test set forth in *Ruff,* we must hold that the offense of burglary and the associated offense of grand theft are of dissimilar import and do not merge. Separate convictions and sentences are thus permitted under R.C. 2941.25.

{23} In the instant case, even though the trial court did not conduct a merger analysis, the statement of facts in the record was comprehensive enough that we could conduct a de novo review. Any error that the trial court may have made by reasoning that concurrent sentences would replace a merger analysis is therefore harmless pursuant to Crim.R. 52(A). "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Crim.R. 52(A). *See, e.g., State v. Morris,* 2023-Ohio-1765 ¶ 48 (2d Dist.) ("If the offenses in question should not have been merged, failure to consider merger did not affect [the defendant's] substantial rights."). There is no prejudice, because the offenses would not have merged even with the proper analysis in the trial court. Consequently, we overrule Wisor's sole assignment of error.

CONCLUSION

{24} The ordering of concurrent sentences is not tantamount to complying with the strictures of the Double Jeopardy Clause of the Fifth Amendment, R.C. 2941.25(A), and *State v. Ruff*. Trial courts must still conduct an analysis to see if allied offenses of similar import merge. In the instant case, we find no prejudicial error, because merger is not appropriate in the circumstances. Hence, we overrule the sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

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

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.