

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-11-054

Appellee

Trial Court No. 2011CR0030

v.

Keith Taylor

**DECISION AND JUDGMENT**

Appellant

Decided: April 5, 2013

\* \* \* \* \*

Paul A. Dobson, Wood County Prosecuting Attorney, and  
Heather M. Baker, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, which found appellant guilty of one count of aggravated burglary, in violation of R.C. 2911.11(A)(1), and one count of felonious assault, in violation of R.C.

2903.11(A)(1). Appellant was sentenced to a total term of incarceration of 13 years. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Keith Taylor, sets forth the following two assignments of error:

I. Trial court abused its discretion and erred to the prejudice of appellant in failing to merge his consecutive sentences.

II. Appellant's conviction was against the manifest weight of the evidence produced at trial.

{¶ 3} The following undisputed facts are relevant to this appeal. The victim leased an apartment in North Baltimore, Ohio. The victim had previously been involved in an intimate relationship with appellant. At the time of the incident, the victim had retrieved her apartment keys from appellant and had also changed her locks at the apartment.

{¶ 4} On January 1, 2011, the victim was a patron at a bar located in Findlay, Ohio. Appellant was likewise present at the same bar. A confrontation between the estranged parties ensued. The victim later voluntarily left the bar with a former boyfriend, Mark Pizana. Pizana drove the victim to her apartment. They locked the front door, went to the bedroom, engaged in consensual sex, and went to sleep.

{¶ 5} In the interim, appellant drove to the victim's locked apartment. Appellant broke in through a window. Appellant repeatedly punched and kicked Pizana in the face. Later during the commotion appellant was causing, Pizana ran to the front door, unlocked it, and fled from the premises. Appellant encountered difficulty in waking up the victim who had consumed a substantial amount of alcohol earlier that evening. Appellant

slapped the victim in the face, pulled her by her hair, threw her into a wall, and ultimately penetrated the victim's vagina with his hand, causing severe injuries.

{¶ 6} The victim eventually awoke and discovered appellant lying next to her. The victim was in substantial pain, having lost a substantial amount of blood as a result of significant vaginal bleeding. She pleaded with appellant to allow her to call for emergency medical assistance. He refused until she consented to a cover story which did not implicate appellant in her injuries. She agreed at that juncture to a fabricated story claiming that her injuries were somehow sustained in an altercation at the bar prior to going home. Once the victim consented to the artifice, 9-1-1 was called. The victim was taken to Blanchard Valley Hospital in Findlay for emergency medical treatment. The severity of her vaginal injuries later necessitated treatment from a plastic surgeon.

{¶ 7} The victim subsequently disclosed the truth of what had occurred to the investigating authorities. On January 20, 2011, appellant was indicted on one count of burglary, in violation of R.C. 2911, a felony of the first degree, one count of rape, in violation of R.C. 2907.02, a felony of the second degree, one count of felonious assault, in violation of R.C. 2903.11, a felony of the second degree, and one count of abduction, in violation of R.C. 2905.02, a felony of the third degree.

{¶ 8} On July 13, 2011, the case proceeded to jury trial. The jury found appellant guilty of aggravated burglary and felonious assault. Appellant was found not guilty of the remaining counts. On August 23, 2011, appellant was sentenced to a nine-year term of incarceration on the aggravated burglary conviction and a four-year term of

incarceration on the felonious assault conviction, to be served consecutively, for a total term of incarceration of 13 years. This appeal ensued.

{¶ 9} In the first assignment of error, appellant maintains that the trial court erred in failing to merge the aggravated burglary and felonious assault convictions for sentencing purposes. The controlling legal standard with which we reviewed the merits of an improper failure to merge claim is set forth in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. *Johnson* established a two-step process for determining whether two offenses are allied offenses of similar import. First, it must be determined whether the same conduct can cause one to commit both offenses. If the first threshold is met, then it must be determined whether the offenses at issue were actually committed by the same conduct. *Id.* at ¶ 49.

{¶ 10} In applying this guiding legal principle, we must determine whether the same conduct could result in committing both offenses. The two offenses at issue are aggravated burglary and felonious assault. The aggravated burglary statute, set forth in R.C. 2911.11(A)(1), establishes that no person shall by force, stealth or deception trespass into an occupied structure with purpose to commit a criminal offense within the structure and inflict, threaten to inflict, or attempt to inflict serious physical harm on another. The felonious assault statute, set forth in R.C. 2903.11(A)(1), establishes that no person shall knowingly cause serious physical harm to another.

{¶ 11} Upon careful consideration, we find that aggravated burglary and felonious assault are not allied offenses of similar import. We find that the key distinguishing

element of conduct separating these offenses is that of trespass. As such, aggravated burglary is predominantly an offense against another's property, whereas felonious assault is predominantly an offense against another's person.

{¶ 12} As applied to the instant case, appellant's conduct in striking and digitally penetrating the victim is what constituted the offense of felonious assault. That same conduct did not constitute aggravated burglary. On the contrary, appellant's separate conduct in breaking into the victim's apartment through a window prior to committing the separate offenses of felonious assault is what constituted the offense of aggravated burglary. We find that these are not allied offenses of similar import. As such, we find that appellant was properly convicted and sentenced separately for both offenses. Wherefore, we find appellant's first assignment of error not well-taken.

{¶ 13} In the second assignment of error, appellant contends that his convictions were against the manifest weight of the evidence. In determining whether a conviction is against the manifest weight of the evidence, the court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way so as to create a manifest miscarriage of justice. *State v. Thompkins*, 78 Ohio St.3d 380, 768 N.E.2d 541 (1997).

{¶ 14} We have carefully reviewed the record of evidence, paying particular attention to the trial transcripts, to determine the propriety of appellant's manifest weight claim. We do not concur. The trial court heard detailed testimony from the victim in

which she described waking up with severe vaginal injuries and appellant lying next to her in bed. The victim explained that her initial cooperation with appellant's cover story was done in order to secure his cooperation in calling for much needed emergency medical assistance. The trial court further heard detailed eyewitness testimony from Pizana, who witnessed appellant assaulting the victim and was himself beaten by appellant before fleeing from the apartment. The trial court also heard the testimony of Sheri Morse, a mutual friend of both appellant and the victim, who testified that appellant disclosed to her that he committed the vaginal assault upon the victim. The trial court likewise heard extensive testimony from treating medical personnel. The record of proceedings contains ample evidence from which it can be concluded that there was sufficient evidence in support of the disputed convictions, the jury did not lose its way, and no manifest miscarriage of justice occurred. Wherefore, we find appellant's second assignment of error not well-taken.

{¶ 15} We find that substantial justice has been done in this matter. The judgment of the Wood County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24,

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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