

[Cite as *State v. Hall*, 2015-Ohio-5148.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102717

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROY LEE HALL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-587635-A

BEFORE: E.T. Gallagher, P.J., Stewart, J., and Blackmon, J.

RELEASED AND JOURNALIZED: December 10, 2015

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Roy Lee Hall (“Hall”), appeals his sentence. He raises the following sole assignment of error:

The trial court erred by ordering convictions and a separate sentence for separate counts because the trial court failed to make a proper determination as to whether those offenses are allied offenses pursuant to R.C. 2941.25 and they are part of the same transaction.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural History

{¶3} Hall was charged with one count of aggravated robbery, in violation of R.C. 2911.01(A), and one count of grand theft of an automobile, in violation of R.C. 2913.02(A)(1). The charges were first- and fourth-degree felonies respectively. They resulted from an incident where Hall and several codefendants robbed a Kay Jewelers store and subsequently fled the scene in a stolen car.

{¶4} Pursuant to a plea agreement, Hall pleaded guilty to an amended count of robbery, a second-degree felony, and an amended count of attempted theft, a fifth-degree felony. The court sentenced Hall to a three-year prison term on the robbery charge, and a 12-month prison term on the attempted theft charge, to be served concurrently. Hall now appeals his sentence.

II. Law and Analysis

{¶5} In his sole assignment of error, Hall contends his two convictions should have merged for sentencing pursuant to R.C. 2941.25. He contends his robbery conviction and his attempted theft conviction are allied offenses because they were part of the same transaction.

{¶6} An appellate court reviews a decision regarding merger of allied offenses de novo. *State v. Williams*, 134 Ohio St.3d 482, 2012-Ohio-5699, 983 N.E.2d 1245, ¶ 28. Hall failed to object to the imposition of multiple punishments at the sentencing hearing. Nevertheless, “Crim.R. 52(B) affords appellate courts discretion to correct ‘[p]lain errors or defects affecting substantial rights’ notwithstanding the accused’s failure to meet his obligation to bring those errors to the attention of the trial court.” *State v. Rogers*, 143 Ohio St.2d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 22.

{¶7} “R.C. 2941.25 codifies the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution, which prohibits multiple punishments for the same offense.” *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 23. Under R.C. 2941.25(A), when the same conduct by the 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.” However, R.C. 2941.25(B) provides:

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.

{¶8} In *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 25, the Ohio Supreme Court set forth the test courts should employ when deciding whether two or more offenses are allied offenses that merge into a single conviction under R.C. 2941.25. In accordance with the court’s prior decision in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, the *Ruff* court held that an allied offenses analysis begins with an examination of the defendant’s conduct. *Ruff* at ¶ 25. However, the court elaborated

on the test and held that multiple offenses do not merge if (1) the offenses are dissimilar in import or significance, (2) the offenses were committed separately, or (3) the offenses were committed with separate animus or motivation. *Id.* at syllabus.

{¶9} With respect to the first factor, the court explained that two or more offenses are dissimilar 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 syllabus.

{¶10} Hall’s convictions involve offenses of dissimilar import because each offense was committed against a separate victim. Hall committed the robbery against Kay Jewelers when he and his codefendants stole jewelry from a Kay Jewelers store. Hall committed the attempted theft charge against a person when he and his codefendants stole the person’s car in order to flee the scene of the robbery. The harm resulting from Hall’s actions is separate and identifiable; Kay Jewelers suffered the loss of some of its inventory, and the owner of the stolen car was deprived of the use of her property. Because these offenses involve different victims and separately identifiable harm, they are not allied offenses subject to merger.

{¶11} The sole assignment of error is overruled.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

EILEEN T. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
PATRICIA ANN BLACKMON, J., CONCUR