

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-160438 C-160761
Plaintiff-Appellee,	:	TRIAL NOS. B-1506803-A B-1600195-A
vs.	:	<i>JUDGMENT ENTRY.</i>
TERRY DARNELL JACKSON, JR.,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Terry Jackson pleaded guilty to charges arising from four home invasions under the cases numbered B-1600195-A and B-1506803. He now appeals his 34-year aggregate sentence on various bases. We affirm.

The Crimes and Sentences

Offenses and sentence under B-1600195-A. In the case numbered B-1600195-A, Jackson pleaded guilty to three counts of aggravated burglary. As to the first count, Jackson admitted that he and two accomplices targeted the Weather home after receiving information that the Weathers had valuables within the home. Jackson and his accomplices spent time observing the house and observing the Weathers. They initially entered the Weathers home when they were present to confront and rob them—not simply burglarize a vacant house. The Weathers were accosted at gun point and were forced to turn over their property.

The second aggravated burglary occurred when Jackson and his accomplices followed a “nice” automobile leaving Kenwood, a high-end shopping area, to a

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residence. At the residence, they accosted the victim, Mr. Zou, and stunned him with a stun gun.

Finally, Jackson admitted that he and his accomplices entered the residence of the aunt of one of the accomplices. Following the established pattern, they made entry while the aunt was home and threatened her with firearms and a stun gun.

The trial court imposed a ten-year sentence of incarceration for each of these counts and ordered that the sentences be served concurrently with each other, and concurrently with the sentence imposed in the case numbered B-1506803-A.

Offenses and sentence under B-1506803-A. In the case numbered B-1506803-A, Jackson pleaded guilty to two counts of aggravated burglary, two counts of aggravated robbery, two counts of kidnapping, one count of felonious assault—each with one specification—and one count of carrying a concealed weapon. The events underlying these charges are similar to each of the preceding crimes. Jackson and his accomplices followed a luxury vehicle from Kenwood to the Dlott/Chesley residence. They returned a few hours later, entering the home with firearms and a stun gun, and proceeded to burglarize the residence, returning to their car multiple times to drop their loot.

Eventually, Jackson and his accomplices confronted Dlott and Chesley, who had been asleep in their bedroom, and demanded money, jewelry, and watches from them. Dlott was forced to her nearby home-office to retrieve money from her purse before being returned to the bedroom. Jackson held a gun on Chesley while robbing him of a significant amount of cash and other items, and continued to hold a gun on him for the next 30 to 40 minutes.

Jackson next demanded to know where the safes were. Dlott and Chesley denied the existence of any safes. Jackson repeatedly attempted to stun Chesley while questioning him. The stun gun was inoperative. Dlott and Chesley remained

insistent that there were no safes. Focus then shifted to Jackson's demand for the keys to the automobile Chesley drove earlier in the evening.

Jackson and his accomplices took Dlott and Chesley to the kitchen where keys for two vehicles in the attached garage were taken. The entire group then moved to the garage, where the assailants' attention was drawn to a red Ferrari. Dlott opened all four garage doors so the assailants could take the cars. Jackson pushed Chesley down the five steps into the garage. Chesley suffered a concussion, several broken bones, and other injuries. Dlott and Chesley escaped through an open garage door as Jackson and his accomplices retreated into the house.

At sentencing, Jackson argued that a number of his charges should merge as allied offenses of similar import. The trial court merged none of the counts, and imposed a sentence on each. It ordered the sentences for the crimes against Chesley to be served consecutively to each other, and the sentences for crimes against Dlott and the three earlier home invasions to be served concurrently to the crimes against Chesley. The total sentence was 34 years of incarceration.

The Offenses Were Not Allied

In his first assignment of error, Jackson claims the trial court erred when it failed to merge allied offenses of similar import in the case numbered B-1506803-A. Jackson argues (1) that his convictions for aggravated robbery should have merged with his convictions for aggravated kidnapping as to each victim, and (2) that the two counts of aggravated burglary should have merged.

To determine whether the offenses are allied offenses of similar import, we ask

- (1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with

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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, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 31.

Aggravated Robbery and Kidnapping. The temporary restraint of liberty is a part of aggravated robbery under R.C. 2911.01(A)(1). *State v. Fears*, 86 Ohio St.3d 329, 344, 715 N.E.2d 136 (1999), citing *State v. Jenkins*, 15 Ohio St.3d 164, 198, 473 N.E.2d 264 (1984), fn. 29. Thus, aggravated-robbery sometimes merges with kidnapping. However, they do not merge in this case.

Jackson committed the aggravated robberies when he demanded money and possessions from Dlott and Chesley at gunpoint in their bedroom. Once the robberies were completed, Jackson and his accomplices transported Dlott and Chesley from their bedroom to their kitchen to retrieve car keys, and ultimately to the garage. His actions transporting his victims to the kitchen and garage to advance the separate crime of attempted theft of the cars were sufficient to establish the kidnapping offense as being committed separately from the aggravated-robbery offenses, and the trial court was correct in sentencing Jackson on both aggravated-robbery offenses and the kidnapping offenses.

Aggravated Burglary. Jackson contends next that the aggravated-burglary convictions for the crimes against Dlott and Chesley should merge. In support, he cites *State v. Brown*, 1st Dist. Hamilton Nos. C-080320 and C-080321, 2009-Ohio-1889, ¶ 27. *Brown* stands for the proposition that multiple robbery charges merge where there is only one victim—in that case the victim of a bank robbery was the corporation, and not its many employees. *See id.* at fn. 19. Where, as here, an offense is defined in terms of conduct toward different victims, the offense has a dissimilar

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import for each person affected by the conduct. *State v. Watkins*, 1st Dist. Hamilton No. C-120567, 2013-Ohio-4222, ¶ 16. Jackson admitted that he threatened, attempted, or actually inflicted physical harm on Dlott and Chesley, separately. Two victims; two crimes; no merger. See *Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, at ¶ 23; *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, 776 N.E.2d 26, ¶ 48. Accordingly, the trial court was correct in sentencing Jackson on both aggravated-burglary counts. The first assignment of error is overruled.

Consecutive Sentences were Proper

In his second assignment of error, Jackson argues that trial court “went through the motions” necessary to impose consecutive sentences in the Dlott/Chesley case, but was guided by the notoriety of the crimes, and did not adequately consider allowing Jackson the chance for rehabilitation and redemption. Jackson cites as evidence that he and his codefendants all received equal sentences of 34 years even though Jackson did not have any prior convictions, but the others did. Jackson omits that according to the victims he was apparently the ringleader, did most of the talking, held a gun to Chesley’s head for the duration of the crime, attempted multiple times to stun Chesley with a stun gun, and shoved Chesley down the stairs. Based on this record, the trial court made the necessary findings to impose consecutive sentences, irrespective of the sentence imposed on Jackson’s codefendants. See *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 29; R.C. 2929.14(C)(4). We overrule Jackson’s second assignment of error.

The Record Supports the 34-year Sentence

In his final assignment of error, Jackson argues that the record does not support his 34-year sentence. In this case, each sentence was within the statutory range for the respective offense, and the trial court made the necessary findings to

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run some of the sentences consecutively. In light of the seriousness of the offenses, we cannot find by clear and convincing evidence that the record does not support the sentence. *See State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231. We overrule the third assignment of error.

The judgments of the trial court are affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

MOCK, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on October 13, 2017
per order of the court _____.

Presiding Judge