

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

STATE OF OHIO,	:	APPEAL NO. C-230067
Plaintiff-Appellant,	:	TRIAL NO. B-1906262
vs.	:	<i>JUDGMENT ENTRY.</i>
PATRICIA DORSEY,	:	
Defendant-Appellee.	:	

The court sua sponte places this case on the accelerated calendar, 1st Dist. Loc.R. 11.1(C)(1), 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.

Defendant-appellant Patricia Dorsey was charged with one count of workers' compensation fraud under R.C. 2913.48(A)(1), one count of workers' compensation fraud under R.C. 2913.48(A)(2), and theft under R.C. 2913.02(A)(3). Dorsey was tried to the bench. The state argued at trial that all three offenses arose out of the same course of conduct over the period from 2015 through 2019. The court found Dorsey guilty of all three counts. The trial court sentenced Dorsey to four years of community control on each of the three counts and set them to run concurrently. The court also ordered \$78,853.30 in restitution.

In her sole assignment of error, Dorsey claims that the trial court erred when it imposed a sentence for each of the three counts instead of merging them as allied offenses of similar import. The state concedes the error.

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As Dorsey correctly notes, R.C. 2941.25 generally precludes convictions for multiple offenses when those offenses are allied offenses of similar import, were not committed separately, and were not committed with separate animus. *State v. Bishop*, 1st Dist. Hamilton No. C-220231, 2023-Ohio-947, ¶ 14, citing *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, ¶ 31. It is clear from the record and the state's argument at trial that Dorsey's three separate charges were alternative theories of liability for the same course of conduct. Accordingly, we agree that the offenses were of similar import, were not committed separately, and were not committed with separate animus.

We note that Dorsey raises this error for the first time on appeal, and therefore, we review for plain error. To show plain error, Dorsey must establish (1) an error occurred; (2) the error was obvious; and (3) there is a reasonable probability that the error resulted in prejudice. *State v. Bailey*, Slip Opinion No. 2022-Ohio-4407, ¶ 8. We have determined that error occurred, and Dorsey is prejudiced by the court's failure to merge the three counts into a single conviction. We note that in its closing argument, the state argued that if the court found her guilty of more than one offense, the offenses would merge. The trial court stated at the sentencing hearing that, "I assume these merge." And yet, the court did not merge the offenses. Accordingly, we find that the error was obvious.

We sustain Dorsey's assignment of error. Accordingly, we vacate the sentences and remand the cause to the trial court for resentencing. On remand, the state must elect which of the allied offenses to pursue against Dorsey for sentencing.

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.

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**CROUSE, P.J., BERGERON and KINSLEY, JJ.**

To the clerk:

Enter upon the journal of the court on August 30, 2023,  
per order of the court \_\_\_\_\_.

Administrative Judge