

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

State of Ohio

Court of Appeals No. L-08-1416

Appellee

Trial Court No. CR0200801936

v.

Jeremy Yates

DECISION AND JUDGMENT

Appellant

Decided: November 6, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Nicole Y. Fech, for appellant.

* * * * *

KNEPPER, J.

{¶ 1} This is an appeal from a judgment of conviction and sentence issued by the Lucas County Court of Common Pleas following appellant's guilty plea to aggravated robbery, aggravated burglary, and two counts of kidnapping. Because we conclude that he was properly sentenced, we affirm.

{¶ 2} In April 2008, appellant, Jeremy Yates, was indicted on and pled not guilty to: two counts of aggravated burglary, in violation of R.C. 2911.A(1) and (A)(2); three

counts of aggravated robbery, in violation of R.C. 2911.01(A)(1) and (A)(2); and three counts of kidnapping, in violation of R.C. 2905.01(A)(2). Each count also included a three year gun specification. The charges stemmed from allegations that appellant, along with two other persons, entered a residence by stealth, deception, and without permission, with the intent to commit a theft offense. Appellant then restrained the occupants of the residence with duct tape, brandished a firearm to them, and demanded drugs and money.

{¶ 3} In August 2009, appellant withdrew his not guilty plea and entered pleas of guilty to: Count 1, aggravated burglary, in violation of R.C. 2911.11(A)(1), with a one year gun specification; Count 3, aggravated robbery, in violation of R.C. 2911.01(A)(1); and Counts 6 and 7, kidnapping, in violation of R.C. 2905.01(A)(2) and (C). Appellant was ultimately sentenced to five years incarceration as to Count 1, five years incarceration as to Count 3, and five years incarceration as to Counts 6 and 7. In addition, the court imposed the mandatory one year sentence as to the gun specification on Count 1. Counts 1 and 3 were ordered to be served consecutively to each other. Counts 6 and 7 were ordered to be served concurrently to each other, but consecutively to Counts 1 and 3.

{¶ 4} Appellant now appeals, arguing the following sole assignment of error:

{¶ 5} "The trial court erred in sentencing appellant to consecutive sentences for the aggravated burglary and the aggravated robbery as the two charges have the same animus and the sentences should have merged pursuant to R.C.2941.25."

{¶ 6} The Supreme Court of Ohio has consistently held that aggravated burglary and aggravated robbery are separate offenses and constitute separate aggravating circumstances because they do not arise from the same act. *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, ¶ 119-120; *State v. Monroe*, 105 Ohio St.3d 384, 2005-Ohio-2282, ¶ 68; *State v. Williams* (1996), 74 Ohio St.3d 569, 580. Therefore, they are not subject to merger, since they are committed with a separate animus. *Ketterer*, supra.

{¶ 7} In this case, the aggravated burglary was complete as soon as appellant entered the residence by stealth and deception with the intent to commit theft and restrained the occupants. The aggravated robbery occurred when appellant brandished the firearm and attempted to rob the individuals in the residence. Consequently, the aggravated burglary and aggravated robbery offenses were committed with a separate animus. Therefore, the trial court did not err in failing to merge the two offenses for the purpose of sentencing.

{¶ 8} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 9} The judgment of the Lucas County Court of Common Pleas is 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Richard W. Knepper, J.
CONCUR.

JUDGE

Judge Richard W. Knepper, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.