

[Cite as *State v. Freeman*, 2006-Ohio-1950.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86463

STATE OF OHIO, :
 :
 Plaintiff-Appellee : JOURNAL ENTRY
 : and
 vs. : OPINION
 :
 MARIO FREEMAN, :
 :
 Defendant-Appellant :

DATE OF ANNOUNCEMENT :
 OF DECISION : APRIL 20, 2006

CHARACTER OF PROCEEDING: : Criminal appeal from
 : Common Pleas Court
 : Case No. CR-454489

JUDGMENT : AFFIRMED.

DATE OF JOURNALIZATION :

APPEARANCES:

For plaintiff-appellee: William D. Mason, Esq.
 Cuyahoga County Prosecutor
 BY: Ralph A. Kolasinski, Esq.
 Assistant County Prosecutor
 The Justice Center, 8th Floor
 1200 Ontario Street
 Cleveland, Ohio 44113

For defendant-appellant: Robert L. Tobik, Esq.
 Cuyahoga County Public Defender
 BY: Robert M. Ingersoll, Esq.
 Assistant Public Defender
 100 Lakeside Place
 1200 West Third Street
 Cleveland, Ohio 44113-1513

MICHAEL J. CORRIGAN, J.:

{¶ 1} When a large fight broke out at a gas station, six different city of East Cleveland police cruisers responded and circled the area. One of the officers ordered defendant Mario Freeman, a participant in the melee, to stop and show his hands. Freeman ignored the order, entered a nearby car, and attempted to escape. In doing so, he rammed three police cruisers, dragged an officer who had reached into the car to turn off the ignition, and crashed into a gasoline pump before being arrested as he ran away.

A jury found Freeman guilty of failure to comply with a lawful order of a peace officer and obstructing official business, but acquitted him of felonious assault charges. Both counts contained specifications that Freeman caused a substantial risk of serious physical harm to persons or property. In this appeal, Freeman makes two related arguments: that the offenses were allied offenses of similar import and that the offenses should have merged for sentencing purposes.

I

{¶ 2} Freeman's first argument contains two interrelated components. First, he maintains that obstructing official business is a "general" crime that is subsumed within the more specific offense of failure to comply. Second, he maintains that even if the offenses are not general/specific, they were nonetheless allied offenses of similar import under the Double Jeopardy Clause of the

United States Constitution and Section 10, Article I of the Ohio Constitution.

{¶ 3} In *State v. Harris*, Franklin App. No. 05AP-27, 2005-Ohio-4553, the Franklin County Court of Appeals considered the same argument and rejected it. The court of appeals stated:

{¶ 4} "Initially, we note that neither the Jeopardy Clause of the Fifth Amendment nor Section 10, Article I, of the Ohio Constitution are implicated by appellant's convictions for both the offense of obstructing official business and the offense of failure to comply with an order of a police officer. A legislature may prescribe the imposition of cumulative punishments for crimes that constitute the same offense under *Blockburger v. United States* (1932), 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306, without violating the federal protection against double jeopardy or corresponding provisions of a state's constitution. *Albernaz v. United States* (1981), 450 U.S. 333, 101 S.Ct. 1137, 67 L.Ed.2d 275. Where a legislature intends to permit cumulative punishments for such crimes, the *Blockburger* test yields to the intent of the legislative body. *Albernaz*, at 340.

{¶ 5} "To discern the intent of the legislature, we must apply the Ohio Multiple Count Statute, R.C. 2941.25. In the abstract, the statutory elements of obstructing official business and of failure to comply with an order of a police officer do not correspond to the degree that the commission of one offense will result in the commission of the other offense. Therefore, the

crimes of obstructing official business and failure to comply with an order of a police officer are not crimes of similar import. Conviction for both offenses is permitted under R.C. 2941.25 and, therefore, comports with the Jeopardy Clause of the Fifth Amendment. See *State v. Rance* (1999), 85 Ohio St.3d 632, 1999-Ohio-291, 710 N.E.2d 699." Id. at ¶31-32.

{¶6} We fully agree with *Harris*. Failure to comply and obstruction of official business are two separate offenses, with no correspondence between elements. That being the case, we see no basis for invoking R.C. 1.51 to determine whether one of the offenses is "general" and therefore subsumed within the other more specific one. Both of the charged offenses have different identities and elements. These offenses are no more "general/specific" than assault would be considered general in nature to murder.

II

{¶7} Freeman next argues that the separate counts of failure to comply and obstruction with official business should have merged for sentencing purposes. He concedes that counsel did not raise this issue at trial, but argues that but for counsel's failure to object at sentencing, the court would have merged the offenses.

{¶8} As the state correctly points out, once a conclusion is reached that the failure to comply and obstructing official business counts are not allied offenses of similar import, any argument relating to the merger of sentences under R.C. 2941.25(B)

is necessarily vitiated. See *State v. Banks*, Cuyahoga App. Nos. 81679, 81680, 2003-Ohio-1530, at ¶41.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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.

MICHAEL J. CORRIGAN
JUDGE

JAMES J. SWEENEY, P.J., and

KENNETH A. ROCCO, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with

supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).