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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-471**

State of Minnesota,
Respondent,

vs.

Eric Grant Andrews,
Appellant.

**Filed February 8, 2011
Affirmed
Johnson, Chief Judge**

Stearns County District Court
File No. 73-CR-09-9132

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Carl Ole Tvedten, County Law Clerk, St. Cloud, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Klaphake, Judge; and Harten,
Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Eric Grant Andrews broke into a woman's home in the middle of the night, assaulted her, and robbed her. He pleaded guilty to first-degree burglary, first-degree aggravated robbery, and second-degree assault with a dangerous weapon. The district court imposed consecutive sentences totaling 138 months of imprisonment. Andrews argues that the district court erred in sentencing him because the three convictions arose from a single behavioral incident and because the aggregate length of the sentences unfairly exaggerates the criminality of his conduct. We affirm.

FACTS

In the early morning hours of August 12, 2009, Andrews and his brother entered a woman's residence through a window in her attached garage. They were armed with handguns and wore masks. The two men awoke the woman in her bed and demanded that she give them drugs. When the woman resisted, the men bound her wrists and ankles with duct tape, beat her, and threatened her while pointing guns at her head. The men took two cellular phones, approximately \$150 in cash, and keys to the woman's truck. Before they left, Andrews's brother held his handgun to the head of the woman's nine-month-old child and told her that if she loved the child, she would not tell anyone about the incident. The woman was treated at a hospital for several injuries, including bruises and abrasions on her head, face, arm, knees, ankles, and wrists.

Two days after the incident, the state charged Andrews with six offenses: first-degree aggravated robbery, a violation of Minn. Stat. § 609.245, subd. 1 (2008); first-

degree burglary while in possession of a dangerous weapon, a violation of Minn. Stat. § 609.582, subd. 1(b) (2008); first-degree burglary with assault on a person within a building, a violation of Minn. Stat. § 609.582, subd. 1(c) (2008); second-degree assault with a dangerous weapon against the woman, a violation of Minn. Stat. § 609.222, subd. 1 (2008); aiding and abetting second-degree assault with a dangerous weapon against her nine-month-old child, a violation of Minn. Stat. § 609.222, subd. 1 and Minn. Stat. § 609.05, subd. 1 (2008); and false imprisonment by intentional restraint, a violation of Minn. Stat. § 609.255, subd. 2 (2008).

In October 2009, Andrews entered an *Alford* plea of guilty to three of the six offenses: first-degree burglary, first-degree aggravated robbery, and aiding and abetting second-degree assault with a dangerous weapon against the child. The state dismissed the remaining charges. The district court imposed permissive consecutive prison sentences of 54 months for the burglary offense, 48 months for the aggravated robbery offense, and 36 months for the offense of aiding and abetting the assault of the child. The district court explained during the sentencing hearing that it had considered, among other things, “the weapons involved, the terror visited on the victims, and the fact that [Andrews] did break into an occupied home at night,” all of which the district court deemed “very serious.” Andrews appeals.

DECISION

Andrews argues that the district court erred in sentencing him. Andrews concedes that consecutive sentences for first-degree burglary, first-degree aggravated robbery, and aiding and abetting second-degree assault with a dangerous weapon are permissive and,

thus, not a departure from the sentencing guidelines. *See* Minn. Sent. Guidelines II.F.2.b; VI (2009). Andrews argues that the district court erred for two reasons: first, because the three convictions arose from a single behavioral incident and, second, because the aggregate length of the three sentences unfairly exaggerates the criminality of his conduct.

I. Same Behavioral Incident

Andrews first argues that the district court erred by sentencing him on each of his convictions because the three convictions arise from a single behavioral incident. If the relevant facts are not disputed, as is true in this case, we apply a *de novo* standard of review to the question whether multiple offenses are part of a single behavioral incident. *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

Generally, a defendant may not be punished for multiple offenses arising from a single course of conduct. Minn. Stat. § 609.035, subd. 1 (2008). But this general rule does not apply to burglary: “prosecution for or conviction of the crime of burglary is not a bar to conviction of or punishment for any other crime committed on entering or while in the building entered.” Minn. Stat. § 609.585 (2008); *see also State v. Williams*, 608 N.W.2d 837, 841 n.9 (Minn. 2000) (concluding that separate sentences for burglary, criminal sexual conduct, and attempted murder were appropriate “even if burglary and other offenses were part of a single behavioral incident”). Thus, the district court did not err by imposing sentences on the burglary conviction and on the other two convictions.

In addition, the general rule prohibiting multiple punishments for a single course of conduct does not apply to multiple offenses affecting multiple victims. *State v.*

Skip in the day, 717 N.W.2d 423, 426 (Minn. 2006); *State v. Sanders*, 598 N.W.2d 650, 656-67 (Minn. 1999). In this case, Andrews committed multiple offenses against multiple victims—the woman and her infant child. Andrews contends that he initially committed the burglary solely with the intent of committing robbery, not assault, and further contends that his brother’s intent in pointing the handgun at the child’s head was not to assault the child but to threaten the woman. Nonetheless, Andrews pleaded guilty to robbing the woman and aiding and abetting the assault of her child. Thus, the district court did not err by imposing a sentence on the robbery conviction that is consecutive to the sentence on the conviction of aiding and abetting assault. *See State v. Holmes*, 778 N.W.2d 336, 341 (Minn. 2010) (affirming consecutive sentences on burglary and assault convictions committed during burglary).

II. Unfair Exaggeration of Criminality

Andrews also argues that the district court erred because the aggregate length of the three consecutive sentences unfairly exaggerates the criminality of his conduct. We apply an abuse-of-discretion standard to a district court’s decision to impose permissive consecutive sentences. *State v. Yang*, 774 N.W.2d 539, 563 (Minn. 2009); *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007). “The district court abuses its discretion in imposing consecutive sentences when the resulting sentence unfairly exaggerates the criminality of the defendant’s conduct.” *Yang*, 774 N.W.2d at 563; *see also State v. Hough*, 585 N.W.2d 393, 397 (Minn. 1998). To determine whether consecutive sentences unfairly exaggerate the criminality of a defendant’s conduct, we

review sentences imposed on other defendants in similar cases. *Yang*, 774 N.W.2d at 563; *McLaughlin*, 725 N.W.2d at 715.

We have identified and reviewed sentences imposed in other cases in which defendants were convicted of similar offenses for similar conduct. In *State v. Scott*, 373 N.W.2d 661 (Minn. App. 1985), *review denied* (Minn. Oct. 24, 1985), we affirmed consecutive sentences totaling 130 months for convictions of burglary, kidnapping, and first-degree assault following an incident in which the defendant forced his way into a home and fired his gun. *Id.* at 662-63. Similarly, in *State v. Franson*, 403 N.W.2d 920 (Minn. App. 1987), we affirmed a sentence of 100 months for first-degree burglary, aggravated robbery, and second-degree assault, following an incident in which the defendant entered the victim's home, assaulted him, threatened him at gunpoint, and stole cash and jewelry. *Id.* at 921-22. The sentences imposed in *Scott* and *Franson* are similar to the sentences imposed on Andrews. Thus, the district court did not err by imposing consecutive sentences totaling 138 months.

Finally, we have reviewed and fully considered Andrews's *pro se* supplemental brief, which buttresses the arguments made by Andrews's appointed counsel but does not raise any additional issues or arguments that would provide an independent ground for relief.

Affirmed.