

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-11-279
- vs -	:	<u>OPINION</u>
	:	8/17/2009
RONALD WADE WRIGHT,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-07-1151

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

James E. Kolenich, 9435 Waterstone Boulevard, Suite 140, Cincinnati, OH 45249, for defendant-appellant

POWELL, P.J.

{¶1} Defendant-appellant, Ronald Wade Wright, appeals his robbery and kidnapping conviction in the Butler County Court of Common Pleas. We affirm appellant's conviction.

{¶2} Appellant was charged with the two offenses after it was alleged that he convinced a motorist (victim) to let him into his vehicle, threatened the victim to obtain cash from the victim's bank account, and then forced the victim to drive him to a street in Hamilton

where appellant left with the cash.

{¶3} Appellant waived a jury trial and the matter was heard by the trial court. Appellant was found guilty of both counts and sentenced to two terms in prison to be served concurrently with each other.

{¶4} Appellant presents two assignments of error that challenge the manifest weight of the evidence for both the robbery and kidnapping offenses. We will combine the two assignments of error for our discussion.

{¶5} A court considering whether a conviction was against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of witnesses. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶39. The question is whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *Id*; *State v. Blanton*, Madison App. No. CA2005-04-016, 2006-Ohio-1785, ¶7.

{¶6} The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. We must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and the weight to be given the evidence. See *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

{¶7} According to the testimony at trial, appellant approached the victim's vehicle in a Fairfield Township parking lot and told him he needed assistance with his daughter's vehicle. The victim allowed appellant to enter his vehicle. The victim testified that appellant initially asked for money and subsequently placed his hand in his jacket pocket and told the victim that he would shoot him if he did not give him money. After discovering the victim was not carrying any money, appellant told the victim to drive to an automatic teller machine

("ATM") to withdraw money from the victim's bank account.

{¶8} The victim testified that he told appellant that he could only withdraw from a particular ATM at one Hamilton bank branch; the victim knew that cameras at that location would photograph appellant. Appellant accompanied the victim inside the bank to use the bank's ATM. The victim was only able to withdraw \$40 from his account and appellant insisted that he not hand over the money until the two men were back in the car.

{¶9} The victim testified that after he gave appellant the cash, appellant told him to drive to a specific location in Hamilton. Once there, appellant reportedly told the victim to stay in the car and not move or he would be shot. Appellant left the area on foot. The victim drove back to the bank to report the incident. The victim testified that he obeyed appellant's directives and did not attempt to escape because he was fearful that appellant would carry out his threats.

{¶10} Conversely, appellant testified that he "cons" money from people, but does not use or threaten violence. Appellant indicated that he obtained money from the victim by promising to provide a computer game or other item. Appellant also indicated that he purposely left some eye glasses with the victim as part of the ruse, but never intended to return for the glasses or repay the money. Appellant stated that the victim was never threatened and likely testified that he was because he was embarrassed about yielding to appellant's deception.

{¶11} After reviewing the record, we cannot say the trial court lost its way and created such a manifest miscarriage of justice when it found that appellant, by his words and conduct, recklessly threatened to inflict physical harm in attempting or committing a theft offense and, further, when it found that appellant did by force, threat, or deception remove the victim or restrain the victim's liberty for the purpose to facilitate the robbery or the flight after the robbery. See R.C. 2911.02(A)(2); see R.C. 2905.01(A)(2). Appellant's first and

second assignments of error as argued on appeal are overruled.

{¶12} However, while the manifest weight of the evidence would support a finding of guilt for both of the counts with which appellant was charged, this court asked the parties to provide supplemental briefs on the issue of the impact, if any, of the allied offense of similar import issue discussed in Ohio Supreme Court case of *State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1058.

{¶13} R.C. 2941.25 states, in pertinent part, that where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the defendant may be convicted of only one, but where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the defendant may be convicted of all of them. The word "animus" in R.C. 2941.25 is defined as "purpose" or "immediate motive." *State v. Logan* (1979), 60 Ohio St.2d 126. The issue is whether the crime was committed with a separate purpose or immediate motive from that with which a defendant committed the other offense. *State v. Coffey*, Miami App. No. 2006 CA 6, 2007-Ohio-21, ¶26.

{¶14} In reviewing the offense of kidnapping, where the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions. *Logan* at syllabus.

{¶15} Further, where the asportation or restraint of the victim subjects the victim to a substantial increase in risk of harm separate and apart from that involved in the underlying crime, there exists a separate animus as to each offense sufficient to support separate convictions. *Id.*

{¶16} In the case at bar, appellant did not respond to the request for supplemental briefs. The state of Ohio argued that no plain error exists because appellant committed the kidnapping with a separate animus from the robbery when, after obtaining money from the victim's ATM, he ordered the victim to take him to a street in Hamilton and effectuated his successful escape on foot by threatening to shoot the victim if the victim moved from his vehicle.¹

{¶17} After reviewing the record, we agree that appellant's conduct toward the victim after he obtained the money at the ATM was not merely incidental to the robbery, but involved a prolonged restraint or substantial movement and subjected the victim to an increased risk of harm beyond the robbery. Accordingly, appellant committed the two offenses with a separate animus sufficient to support separate convictions. See *Logan*; see *State v. Davis* (Dec. 21, 1989), Cuyahoga App. No. 56296, 1989 WL 155154, *8 (defendant's kidnapping of victim took on a significance of its own as he forced the victim back into the car and continued his asportation of her after she had made the bank withdrawals, thereby substantially increasing the risk of harm to which she was exposed); *State v. Herbert*, Hancock App. No. 5-07-51, 2009-Ohio-9141, ¶26 (binding victim with fan cord and ripping phone from jack prolonged disabled victim's restraint after robbers left his apartment).

{¶18} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.

1. The Ohio Supreme Court in *Winn* recognized that the state did not challenge the appellate court's determination that Winn did not have a separate animus for the kidnapping and aggravated robbery and, therefore, it did not address the issue.

[Cite as *State v. Wright*, 2009-Ohio-4131.]