[Cite as *State v. Miller*, 2010-Ohio-5795.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2010-T-0018
- vs -	:	
WILLIAM R. MILLER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 148.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Michael A. Partlow, Morganstern, MacAdams & DeVito Co., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113-1204 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, William R. Miller, appeals from the judgment of the Trumbull County Court of Common Pleas affirming the jury's guilty verdict of rape and kidnapping, each carrying a repeat violent offender specification. Appellant was sentenced to a 30-year term of imprisonment.

{¶2} The instant appeal stems from an incident on February 7, 2009. L.B.[1] and her friend, Jolene Beach, were patrons at Blue Magoo bar in downtown Warren, Ohio. Beach and L.B. met appellant at the bar, and the three individuals drank and engaged in conversation. Toward the end of the night, L.B. offered appellant a ride home to Niles, Ohio, since she was traveling in the same direction. Appellant agreed and he directed L.B. as they were driving. During the drive, appellant suggested that he and L.B. check into a hotel. Ignoring his requests, L.B. continued to drive. Appellant directed L.B. beyond the city limits of Niles to Weathersfield Township. Appellant instructed L.B. to drive to Old Salt Springs Road, an unlit, secluded road that is approximately one mile long. Here, appellant took out a knife and instructed L.B. to remove her shirt and bra. L.B. complied. Appellant unzipped his pants and shoved L.B.'s head into his lap, forcing her to perform oral sex on him for approximately five to ten minutes.

{¶3} L.B. testified that she was crying, and, sensing a way to escape, she informed appellant that she would go to a hotel with him. L.B. stated that appellant agreed and said, "let's get out of here." L.B. got dressed and attempted to drive away; however, her car became stuck in the snow. A passing motorist, Nathan McCracken, noticed L.B.'s car and stopped to see if she needed assistance.

{¶4} McCracken indicated that as he approached the vehicle, both L.B. and appellant were standing outside the vehicle. McCracken testified that L.B. came around the back of his vehicle, squeezed his hand, and whispered, "get me out of here."

{¶5} L.B. stated that she remained seated in the vehicle and mouthed the words, "please help me." Nevertheless, both L.B. and McCracken maintained that when the vehicle became unstuck, L.B. drove off, leaving appellant behind. McCracken

1. For purposes of this appeal, we use the victim's initials.

offered appellant a ride home. McCracken dropped appellant off at the intersection of Ohltown and Niles Carver Road in Weathersfield Township.

{¶6} Upon fleeing the scene, L.B. called 9-1-1. Before driving to the Niles Police Department, L.B. testified that she stopped at a gas station to purchase a soda and cigarettes. At the police station, the police determined that the rape occurred in Weathersfield Township. Therefore, the Weathersfield Police Department was contacted and Patrolman Todd Garlow was sent to the Niles station to take a report. Patrolman Garlow observed L.B., who was upset and crying. Together, they drove to the location of the incident; however, Patrolman Garlow was unable to recover any evidence. While L.B. allowed the police to search her vehicle, she did not allow them to impound it, as she had just started a new job and needed the car for transportation. L.B. also testified that if her vehicle was impounded, she would have to inform her elderly father of the incident. A search of the vehicle revealed a cigarette butt behind the passenger's seat. At trial, Brenda Gerardi, a forensic scientist, testified that the DNA on the cigarette butt matched appellant's profile by a ratio of 3.8 quintillion to one.

{¶7} The jury found appellant guilty of rape, a violation of R.C. 2907.02(A)(2) and (B), and kidnapping, a violation of R.C. 2905.01(A)(4) and (C). Each count carried a repeat violent offender specification, pursuant to R.C. 2941.149. The trial court held a hearing to address the repeat violent offender specifications. The trial court found beyond a reasonable doubt that appellant "has presently been convicted of a felony of the first or second degree which was an offense of violence ***. The Court further [found] beyond a reasonable doubt that [appellant has] been previously convicted of a felony of the first or second degree which is an offense of violence, to wit, the 1980 convictions in case 80-CR-639, rape and kidnapping."

{¶8} The trial court sentenced appellant to a ten-year term of imprisonment on count one, rape, and to a ten-year term on the repeat violent offender specification, to be served consecutive with the rape count. As to count two, kidnapping, the trial court sentenced appellant to a ten-year term of imprisonment and a ten-year term of imprisonment on the repeat violent offender specification, which was merged with the repeat violent offender specification on count one. Therefore, appellant was sentenced to a total term of 30 years imprisonment.

{¶9} Appellant filed a timely notice of appeal and asserts the following assignments of error:

{¶10} "[1.] The trial court erred by denying appellant's Crim.R. 29 motion for acquittal as to kidnapping and the repeat violent offender specifications, and by failing to merge those specifications for purposes of sentencing.

{¶11} "[2.] The trial court abused its discretion by denying appellant's motion for a mistrial.

{¶12} "[3.] The trial court erred by denying the appellant's motion to dismiss when the record reveals that more than ninety days had passed between the appellant's initial incarceration and the day that the trial began.

{¶13} "[4.] The trial court abused its discretion by sentencing appellant to maximum and consecutive terms of incarceration, where the record reveals that such terms are unreasonable.

{¶14} "[5.] The appellant's conviction is against the manifest weight of the evidence."

{¶15} For ease of discussion, we address appellant's assigned errors out of numerical order. We first address appellant's fifth assignment of error where he alleges that his convictions are against the manifest weight of the evidence.

{¶16} In determining whether a verdict is against the manifest weight of the evidence, the Supreme Court of Ohio has adopted the following language as a guide:

{¶17} "'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. 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* (1997), 78 Ohio St.3d 380, 387. (Citations omitted.)

{¶18} Appellant argues that the testimony of L.B. was inconsistent with that of Beach and McCracken. The weight to be given to the evidence and the credibility of witnesses, however, are primarily matters for the jury to decide. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. In assessing the witnesses' credibility, the trial court, as the trier of fact, had the opportunity to observe the witnesses' demeanor, body language, and voice inflections. *State v. Miller* (Sept. 2, 1993), 8th Dist. No. 63431, 1993 Ohio App. LEXIS 4240, at *5-6. Thus, in this matter, the trial court was "clearly in a much better position to evaluate the credibility of witnesses than [this] court." Id. at *6.

{¶19} Appellant further complains that, unlike L.B., he cooperated fully with the police investigation. Appellant argues that after calling 9-1-1, L.B. was instructed to report immediately to the police station; however, she instead stopped at a gas station

to purchase cigarettes and a soda. The jury, however, heard the testimony of L.B. that she decided to stop at the gas station to buy a soda so she could "wash [her] mouth out." Further, the jury heard testimony that verified L.B. cooperated with police. L.B. testified that she drove herself to the Niles Police Department to report the rape, gave a written statement, and accompanied officers to the scene of the rape. Further, appellant allowed police to search her car.

{¶20} The jury, after having the opportunity to listen to the witnesses and judge their credibility, was free to believe that appellant was guilty of the crimes charged. We defer to the judgment of the jury and find that their verdict did not create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Appellant's fifth assignment of error is without merit.

{¶21} In his second assignment of error, appellant argues that the trial court erred in overruling his motion to dismiss based on the prosecutor's eliciting of his prior bad acts.

{¶22} "[T]he granting or denial of a motion for mistrial rests in the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *State v. Iacona* (2001), 93 Ohio St.3d 83, 100, citing *State v. Sage* (1987), 31 Ohio St.3d 173, 182.

{¶23} Evid.R. 404(B) states that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶24} On March 17, 2009, the state filed a notice of intent "to introduce evidence of the defendant's other crimes, wrongs, or acts in accordance with Evidence Rule 404(B)." Specifically, the state sought to introduce evidence that appellant was convicted of rape, a violation of R.C. 2907.02, and kidnapping, a violation of R.C. 2905.01, in 1980 (case No. 80-CR-639) and/or appellant's 1980 aggravated burglary conviction, a violation of R.C. 2911.12 (case No. 80-CR-164). The state contended the evidence was admissible to "prove motive, opportunity, intent, preparation, plan, knowledge, identity, and lack of mistake."

{¶25} Appellant's attorney filed a motion in limine precluding the state from admitting the prior convictions.

{¶26} In a December 10, 2009 judgment entry, the trial court stated:

{¶27} "The Court acknowledges that the prior criminal acts appear to be only minimally related in time (over 25 years). However the Court takes into consideration the fact that the Defendant has been incarcerated or on parole for 25 years. Therefore, this alleged criminal event is within 5 years of when the Defendant was released from supervision for the prior 1980 conviction.

{¶28} "Furthermore the alleged circumstances in regard to the opportunity, preparation, plan, and knowledge are very similar. Therefore taking into consideration the short time in which the Defendant was not under supervision and similarities of the acts, the Court finds that the prior acts are related for purposes of the exceptions under Evidence Rule 404(B)."

{¶29} Appellant does not assign error to the admissibility of such evidence under Evid.R. 404(B). In fact, a prior victim, S.T., testified that in 1980, appellant raped both her and her friend. S.T. testified to this rape in detail, stating that the rape occurred on

Old Salt Springs access road and that appellant produced a knife. At the close of S.T.'s testimony, the trial court gave the following instruction to the jury:

{¶30} "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or acts."

{¶31} Instead, appellant assigns error to the following question posed by the prosecutor to L.B.:

{¶32} "Q: Before you talked to the police, did you know that the defendant had kidnapped two girls back in 1980 at knife point?

{¶33} "A: No."

{¶34} The trial court sustained an objection and the following side bar discussion occurred:

{¶35} "THE COURT: Don't you dare try to get into the facts of that 1980 offense through this witness. Don't.

{¶36} "[Prosecutor]: I'm not going to try to get into the facts. But I can't say that she didn't know how any of that happened. So I can't say that she didn't –

{¶37} "THE COURT: She doesn't know how it happened. Go to the next question."

{¶38} The trial court sustained appellant's objection, and, during the course of the trial, the jury was instructed that one "must not speculate as to why the court sustained an objection to a question or what the answer to that question might have been. You must not draw any inference or speculate upon the truth of any suggestions included in a question that was not answered." "A jury is presumed to follow the

instructions given to it by the trial judge." *State v. Loza* (1994), 71 Ohio St.3d 61, 75. (Citations omitted.)

{¶39} Furthermore, as noted, the jury heard the testimony of S.T., who outlined the 1980 rape in detail. While the prosecutor's question was objectionable, the failure to grant a mistrial was harmless error, as appellant was not denied a fair trial. Appellant's second assignment of error is without merit.

{¶40} In his third assignment of error, appellant alleges the trial court erred in overruling his motion to dismiss for violation of speedy trial rights. The Sixth Amendment of the United States Constitution and Article I, Section 10 of the Ohio Constitution guarantee the right to a speedy trial.

{¶41} "The standard of review of a speedy trial issue is to count the days of delay chargeable to either side, and determine whether the case was tried within the time limits set by R.C. 2945.71. ***

{¶42} "Speedy trial issues present mixed questions of law and fact. *** We accept the facts as found by the trial court on some competent, credible evidence, but freely review the application of the law to the facts. ***." *State v. Kist*, 173 Ohio App.3d 158, 2007-Ohio-4773, at ¶17-18. (Internal citations omitted.)

{¶43} Since appellant was charged with a felony, he had to be brought to trial within 270 days of his arrest. R.C. 2945.71(C)(2). If the accused is not brought to trial within the time specified by R.C. 2945.71, the accused "shall be discharged" "[u]pon motion made at or prior to the commencement of trial ***." R.C. 2945.73(B).

{¶44} In the instant case, appellant was arrested on February 27, 2009. It appears from the record that appellant did not post bond. Due to the triple-count provision of R.C. 2945.71(E), any days appellant spent in jail on said charges are

counted as three days. Therefore, appellant's speedy trial would have expired on May 28, 2009.

{¶45} Appellant's trial, however, did not begin until December 18, 2009. The time within which appellant must be brought to trial may be tolled as specified in R.C. 2945.72, which provides, in pertinent part:

{¶46} "The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

{¶47} "***

{¶48} "(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

{¶49} "***

{¶50} "(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion[.]"

{¶51} We must, therefore, address appellant's tolling events under R.C. 2945.72(E). A review of the record reveals that on March 2, 2009, appellant filed a series of discovery motions and request for a bill of particulars. The state of Ohio responded to said discovery motions on March 17, 2009. The Supreme Court of Ohio has held that a defendant's demand for discovery or a bill of particulars is a tolling event, pursuant to R.C. 2945.72(E). *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, at ¶18. The court reasoned that "[d]iscovery requests by a defendant divert the attention of prosecutors from preparing their case for trial, thus necessitating delay. If no tolling is permitted, a defendant could attempt to cause a speedy trial violation by

filing discovery requests just before trial." Id. at ¶23. Thus, the period from March 2, 2009 through March 17, 2009 was tolled.

{¶52} Also, on March 17, 2009, the state of Ohio filed reciprocal discovery requests. Appellant failed to respond. Not receiving discovery from appellant, the state of Ohio again filed its reciprocal discovery requests on December 1, 2009. Appellant again failed to respond to the discovery requests. In fact, when appellant filed his motion on December 14, 2009, also the date his trial commenced, he had still failed to respond to the state's reciprocal discovery request.

{¶53} Crim.R. 16(C) provides that if a defendant receives discovery from the state pursuant to Crim.R. 16(B), and the state requests reciprocal discovery from the defendant, the defendant "shall comply" with the state's discovery request. "A defendant's untimely compliance with the state's discovery request is chargeable to the defendant under R.C. 2945.72(D), which extends the time for trial for any period of delay occasioned by the neglect or improper act of the defendant." *State v. Stewart* (Sept. 21, 1998), 12th Dist. No. CA98-03-021, 1998 Ohio App. LEXIS 4384, at *4. (Citation omitted.)

{¶54} A criminal defendant "can hardly ignore a lawful request for information, and then claim that [he] was not timely tried caused by [his] own motions and neglect." *Chagrin Falls v. Vartola* (Apr. 2, 1987), 8th Dist. Nos. 51571 and 51572, 1987 Ohio App. LEXIS 6926, at *4.

{¶55} This court, in *State v. Jackson*, 11th Dist. No. 2007-A-0079, 2008-Ohio-6976, at ¶117, stated:

{¶56} "'(A) defendant's failure to respond within a reasonable time to a prosecution request for reciprocal discovery constitutes neglect that tolls the running of

speedy trial time pursuant to R.C. 2945.72(D).' *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, ¶24. Furthermore, 'the tolling of a statutory speedy-trial time based on defendant's neglect in failing to respond within a reasonable time to a prosecution request for discovery is not dependent upon the filing of a motion to compel discovery by the prosecution.' Id."

{¶57} Appellant has failed to allege a prima facie speedy trial violation, as he did not respond to the state's reciprocal discovery request. Appellant cannot ignore the state's request for reciprocal discovery and then allege that he was tried in an untimely manner.

{¶58} In denying appellant's motion to dismiss for violation of his right to a speedy trial, however, the trial court failed to "determine the date by which the defendant should reasonably have responded to a reciprocal discovery request based on the totality of facts and circumstances of the case[.]" *Palmer*, supra, at ¶24. This court has affirmed a trial court's ruling that 30 days is a reasonable amount of time to respond to such a request. *Jackson*, supra, at ¶116.

{¶59} Speedy trial time was, therefore, tolled on April 17, 2009, which is 30 days after the state filed its request for discovery on March 17, 2009.

{¶60} Taking the above into account, appellant was tried within the 90-day period as prescribed by statute. Therefore, appellant's third assignment of error is without merit.

{¶61} Under his first assignment of error, appellant argues that the kidnapping conviction pursuant to R.C. 2905.01(A)(4) and the rape conviction pursuant to R.C. 2907.02(A)(2) should have been merged for purposes of sentencing, as they constitute

allied offenses of similar import. Appellant claims that "there was never any force or threat of force prior to the time that the knife was allegedly produced."

{¶62} Rape, R.C. 2907.02, in part, provides:

{¶63} "(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender *** when any of the following applies:

{¶64} "(2) [T]he offender purposely compels the other person to submit by force or threat of force."

{¶65} Kidnapping, R.C. 2905.01, in part, provides:

{¶66} "(A) No person, by force, threat, or deception *** shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

{¶67} "(4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will[.]"

{¶68} In addressing a claim that two or more offenses are allied offenses, trial courts are guided by Ohio's multiple-count statute, R.C. 2941.25, which provides:

{¶69} "(A) Where the same conduct by [the] defendant can be construed to constitute two or more allied offenses of similar import, the indictment *** may contain counts for all such offenses, but the defendant may be convicted of only one.

{¶70} "(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or 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 indictment *** may contain counts for all such offenses, and the defendant may be convicted of all of them."

{¶71} In conducting an analysis pursuant to R.C. 2941.25, courts employ a two-step process when considering whether two offenses are allied offenses of similar import. *State v. Rance* (1999), 85 Ohio St.3d 632, paragraph three of the syllabus. The Supreme Court of Ohio has recently clarified the first step of the process:

{¶72} "In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), courts are required to compare the elements of offenses in the abstract without considering the evidence in the case, but are not required to find an exact alignment of the elements. Instead, if, in comparing the elements of the offenses in the abstract, the offenses are so similar that the commission of one offense will necessarily result in commission of the other, then the offenses are allied offenses of similar import." *State v. Cabrales*, 118 Ohio St.3d 54, 2008-Ohio-1625, paragraph one of the syllabus, clarifying *Rance*, supra.

{¶73} In *State v. Price* (1979), 60 Ohio St.2d 136, at paragraph five of the syllabus, the Supreme Court of Ohio held:

{¶74} "A rape conviction, pursuant to R.C. 2907.02(A)(1), and a kidnapping conviction, pursuant to R.C. 2905.01(A)(4), are allied offenses of similar import within the meaning of R.C. 2941.25(A), and cannot be punished multiply when they are *neither committed separately nor* with a separate animus as to each within the meaning of R.C. 2941.25(B). (*State v. Donald*, 57 Ohio St.2d 73, and *State v. Logan*, 60 Ohio St.2d 126, approved and followed.)" (Emphasis added.)

{¶75} In determining whether a separate kidnapping and rape are committed with a separate animus so as to permit punishment under R.C. 2941.25(B), the Supreme Court of Ohio, in *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, at ¶90, stated:

{¶76} "In *State v. Logan* (1979), 60 Ohio St.2d 126, we established guidelines to determine whether kidnapping and rape are committed with a separate animus so as to permit separate punishment under R.C. 2941.25(B). We held in *Logan* that '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.' Id. at paragraph (a) of the syllabus. Conversely, the *Logan* court recognized that where the asportation or restraint 'subjects the victim to a substantial increase in risk of harm separate and apart from (***) the underlying crime, there exists a separate animus.' Id., 60 Ohio St.2d 126, at paragraph (b) of the syllabus."

{¶77} In *Price*, supra, the Supreme Court of Ohio determined that "the restraint and asportation of the victim necessary to substantiate the kidnapping offense were not distinct from the rape, either in time or function[.]" *State v. Ware* (1980), 63 Ohio St.2d 84, 86, citing *Price*, supra, at 143. In *Price*, the appellant asked the victim if she wanted to engage in sexual intercourse. *Price*, supra, at 136. The victim refused and returned to the car. Id. The appellant pulled the victim from the backseat of the vehicle to a nearby area where the appellant raped the victim. Id. "The force by which [the] appellant removed [the victim] from the car to behind a nearby bush to engage in sexual conduct, as required under the rape statute, is indistinguishable from the force by which [the] appellant restrained [the victim] of her liberty, as required under the kidnapping statute." Id. at 143.

{¶78} In *State v. Ware*, 63 Ohio St.2d 84, the Supreme Court of Ohio determined whether the appellant's conviction for kidnapping was barred by the provision of R.C. 2941.25. The victim was unable to find a telephone to request a ride home. Id. The appellant offered the victim to use his telephone at his residence. Id. After they arrived at his residence, the appellant "laughed and stated that he did not have a telephone, and began making advances toward the victim." Id. Resisting, the appellant picked up the victim, carried her to an upstairs bedroom and, under threats of death, forced her to engage in vaginal and anal intercourse. Id. The *Ware* Court concluded that the two crimes, rape and kidnapping, were committed separately as "there was an act of asportation by deception which constituted kidnapping, and which was significantly independent from the asportation incidental to the rape itself." Id. at 87.

{¶79} Similarly, in *State v. DePina* (Jan. 25, 1984), 9th Dist. No. 1283, 21 Ohio App.3d 91, the court concluded that the conduct of the appellant resulted in the commission of two separate offenses where the appellant told the victim, who he met in a bar, to accompany him outside to his vehicle so that he could retrieve money from his vehicle. Once outside, the appellant informed the victim that his vehicle was across the street. Id. at 91. Upon crossing the street, the appellant threatened her with a knife, drug her into a wooded area, and raped her vaginally. Id. The court stated, "[t]he victim was induced out of the bar by deception, then forcibly removed to a secluded area where she was raped. Under these facts there was an asportation by deception which constituted a kidnapping and which was significantly independent from the asportation incidental to the rape itself." Id. at 92-93.

{¶80} Determining that the offenses are allied, we proceed to the second step, which is to analyze appellant's conduct to determine if he acted with a separate animus in committing the two offenses. Here, appellant's confinement of L.B. was clearly secretive. Appellant informed L.B. that he lived in Niles. As L.B. was also traveling to Niles, she informed appellant that she would give him a ride home. As L.B. was driving, appellant was giving her directions; however, instead of directing L.B. to his residence in Niles, he directed her to a secluded area beyond the city limits. L.B. testified that she was unfamiliar with the area. Appellant directed L.B. to Old Salt Springs Road, an area that is dark, secluded, and only lightly traveled.

{¶81} Further, appellant's movement of L.B. was substantial so as to demonstrate a significant event independent of the other offense. From the testimony and evidence at trial, appellant directed L.B. south and west of his home, which is located on the north side of Niles. McCracken testified that it was approximately nine miles from Cherry Street, the location of appellant's residence, to where he dropped off appellant after assisting them at the scene. The distance from Old Salt Springs Road is even further.

{¶82} As in *Ware* and *DePina*, this case involved an act of asportation by deception which constituted kidnapping, and which was significantly independent from the asportation incidental to the rape itself.

{¶83} Based on the record before us, we conclude that the offense of kidnapping was not merely incidental to the rape but, rather, was committed separately or with a separate animus.

{¶84} Appellant's first assignment of error is without merit.

{¶85} In his fourth assignment of error, appellant maintains that it was an abuse of discretion for the trial court to sentence him to maximum and consecutive terms of incarceration. Appellant was sentenced to a total term of 30 years imprisonment.

{¶86} Appellant was convicted of count one, rape, a first-degree felony. Under R.C. 2929.14(A)(1), the prison term for a felony of the first degree shall be "three, four, five, six, seven, eight, nine, or ten years." Count one also carried a repeat violent offender specification, whereby the trial court sentenced appellant to a ten-year term of imprisonment to run consecutively to count one. Appellant was also convicted of count two, kidnapping, a first-degree felony. The trial court sentenced appellant to a ten-year term of imprisonment on count two, complying with R.C. 2929.14(A)(1). This was to run consecutive to count one and the repeat violent offender specification on count one. Count two also carried a repeat violent offender specification, whereby the trial court sentenced appellant to a ten-year term of imprisonment to run consecutive with count two. The repeat violent offender specification on count two merged into the repeat violent offender specification on count one.

{¶87} Appellant's sole argument with regard to the imposition of sentence is that it is "unreasonable in light of the factors set forth in R.C. 2929.12 for achieving the goals for sentencing as set forth in R.C. 2929.11." The record does not support this contention. In its sentencing entry, the trial court specifically notes that it "has considered the record, oral statements, and any victim impact statement, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and has balanced the seriousness and recidivism factors of O.R.C. 2929.12." See *State v. Mordas*, 11th Dist. No. 2009-P-0028, 2010-Ohio-196, at ¶15-17.

{¶88} The trial court did not err in sentencing appellant to a 30-year term of imprisonment, as the length of the sentence was within the statutory range, and the statutory shortcomings appellant claims were not considered were specifically addressed.

{¶89} Appellant's fourth assignment of error is without merit.

{¶90} For the reasons stated in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.