

[Cite as *State v. Terrell*, 2009-Ohio-3257.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080286
	:	TRIAL NO. B-0704282
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
TRIQUERO TERRELL,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 2, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Ronald W. Springman*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Bruce K. Hust, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Presiding Judge.

{¶1} Defendant-appellant Triquero Terrell was found guilty following a jury trial of two counts of kidnapping and single counts of felonious assault, rape, and attempted rape. The trial court imposed 10 years' imprisonment for rape and for each count of kidnapping and eight years' imprisonment for felonious assault and attempted rape. These sentences were ordered to be served consecutively, for an aggregate sentence of 46 years' imprisonment.

{¶2} Terrell now appeals. He argues in his sole assignment of error that the trial court erred by entering convictions for each of the two counts of kidnapping and for the offenses of rape and kidnapping because the offenses were allied offenses of similar import. We affirm the trial court's judgment.

A Horrific Crime

{¶3} In the early morning hours of October 13, 2006, Terrell purposely rear-ended a car driven by Amber Ghatani while Ghatani was stopped at a red light. Ghatani got out to see if her car had been damaged, and Terrell also got out of his car. Terrell directed Ghatani into a nearby parking lot under the pretext of concern over blocking the road.

{¶4} Ghatani drove into the parking lot and again exited from her car. Almost immediately thereafter, she was struck in the face by Terrell. Ghatani attempted to call for help on her cellular phone, but Terrell knocked it out of her hands. He then forced her to perform oral sex on him in a grassy area near the parking lot. Ghatani blacked out during the attack, and when she awoke, her pants were around her ankles, her tampon had been removed, and Terrell was gone.

{¶5} Ghatani suffered serious injuries in the attack. Her chin was split open, and she suffered extensive injuries to her jaw and mouth. Ghatani's teeth were knocked out of place, causing her to undergo two root canals, the removal of several teeth, and chronic pain, and resulting in her inability to entirely close her mouth.

Kidnapping and Kidnapping

{¶6} Terrell was found guilty of two counts of kidnapping, under R.C. 2905.01(A)(4) and under R.C. 2905.01(B)(1). He argues that because these offenses were allied and of similar import, the trial court should only have entered a conviction for one offense.

{¶7} Under R.C. 2941.25, Ohio's multiple-count statute, if a defendant's conduct results in allied offenses of similar import, the defendant may only be convicted of one of the offenses.¹ But if the defendant commits each offense separately or with a separate animus, then convictions may be entered for both offenses.²

{¶8} Both R.C. 2905.01(A)(4) and R.C. 2905.01(B)(1) prohibit kidnapping. R.C. 2905.01(A)(4) provides that "[n]o 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 * * * [t]o engage in sexual activity." R.C. 2905.01(B)(1) provides that "[n]o person by force, threat, or deception * * * shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim: (1) [r]emove another from the place where the other person is found."

¹ R.C. 2941.25(A).

² R.C. 2941.25(B).

{¶9} In this case, the record is clear that Terrell committed each kidnapping offense separately and with a separate animus. The kidnapping under R.C. 2905.01(B)(1) occurred when Terrell directed Ghatani into the parking lot after purposely rear-ending her vehicle. Through the use of deception, he removed Ghatani from her path into the parking lot, where the physical assault took place. The kidnapping under R.C.2905.01(A)(4) occurred when Terrell forced Ghatani from the parking lot into the nearby grassy area where he raped her.

{¶10} The kidnappings occurred at different times and had different purposes. Because Terrell committed two separate acts of kidnapping and had a separate animus for each act, the trial court properly entered convictions for each offense.

Kidnapping and Rape

{¶11} Terrell further argues that he could not have been convicted of rape and kidnapping because the offenses were allied offenses of similar import. The state counters that because Terrell committed the offenses with a separate animus, he was properly convicted of both offenses.

{¶12} The Ohio Supreme Court has provided guidance concerning whether kidnapping and another offense (in this case, rape) were committed with the same or a separate animus. In *State v. Logan*, the court held that “[w]here 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.”³

{¶13} In this case, Terrell struck Ghatani in the parking lot, knocking her cellular phone out of her hand and causing extreme injury to her face. He then moved Ghatani into a nearby grassy area where he committed the rape and attempted rape. The record indicates that the grassy area was connected to the parking lot and was not far from where Ghatani had parked her car. The restraint of Ghatani was not prolonged, nor was the movement substantial enough to demonstrate a separate animus for the kidnapping and for the rape under *Logan*.⁴

{¶14} But in *Logan*, the court further determined that “[w]here 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.”⁵

{¶15} In this case, Terrell’s restraint of Ghatani did subject her to a substantial increase in risk of harm that was more than that necessary to compel her to submit to the rape. Terrell struck Ghatani in the face immediately upon her exit from her vehicle. This beating occurred before he raped her, and as we have already described, it caused severe injury to Ghatani’s face. The harm used to restrain her clearly subjected Ghatani to a risk of harm separate from the force used to rape her.⁶

³ *State v. Logan* (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus.

⁴ See *State v. Willis*, 1st Dist. No. C-040588, 2005-Ohio-5001.

⁵ *Logan*, syllabus.

⁶ See *State v. Hill*, 64 Ohio St.3d 313, 332, 1992-Ohio-43, 595 N.E.2d 884.

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{¶16} Accordingly, we conclude that the offenses of rape and kidnapping were committed with a separate animus, and that Terrell could, therefore, have been convicted of both.

{¶17} Terrell's assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

HILDEBRANDT and CUNNINGHAM, JJ., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.