

[Cite as *State v. Bohannon*, 2010-Ohio-4596.]

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

STATE OF OHIO,	:	APPEAL NOS. C-070859
		C-070860
Plaintiff-Appellee,	:	TRIAL NOS. B-0609322
		B-0609775
vs.	:	
		<i>DECISION.</i>
JAMES BOHANNON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Sentences Vacated and Cause Remanded

Date of Judgment Entry on Appeal: September 29, 2010

Joseph Deters, Hamilton County Prosecuting Attorney, and *James Michael Keeling*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Roger W. Kirk, for Defendant-Appellant.

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

HILDEBRANDT, Judge.

{¶1} Following a jury trial, defendant-appellant James Bohannon was convicted of five counts of aggravated robbery, three counts of rape, two counts of gross sexual imposition, and seven counts of kidnapping, each with a sexual-motivation specification. Bohannon's victims were seven young men. The trial court imposed a separate sentence for each conviction, resulting in an aggregate prison term of 99 years. Bohannon appealed his convictions. We affirmed those convictions in March 2009.¹ Bohannon appealed our decision to the Ohio Supreme Court, but that court declined jurisdiction.²

{¶2} In December 2009, this court granted Bohannon's application to reopen his appeal under App.R. 26(B), holding that Bohannon's appellate counsel had been ineffective in failing to submit assignments of error challenging, under R.C. 2941.25, the trial court's imposition of, and his trial counsel's failure to object to the imposition of, separate prison terms upon the jury verdicts finding him guilty of kidnapping and rape, of kidnapping and gross sexual imposition, and of kidnapping and aggravated robbery, when the paired offenses had been perpetrated upon the same victim.

{¶3} In the reopened appeal, Bohannon brings forth a single assignment of error, challenging the trial court's imposition of separate prison terms upon jury verdicts finding him guilty of allied offenses of similar import. This challenge is well taken.

¹ *State v. Bohannon* (Mar. 11, 2009), 1st Dist. Nos. C-070859 and C-070860.

² *State v. Bohannon*, 122 Ohio St.3d 1521, 2009-Ohio-4776, 913 N.E.2d 457.

{¶4} Bohannon was found guilty and sentenced for both kidnapping and rape in connection with three armed rapes. He was also found guilty and sentenced for kidnapping, aggravated robbery, and gross sexual imposition in connection with the two armed robberies involving sexual contact. Finally, he was found guilty and sentenced for both kidnapping and aggravated robbery in connection with two armed robberies not involving sexual contact. Bohannon maintains that sentencing him for all the allied offenses charged with respect to each victim was precluded by R.C. 2941.25. We are constrained to agree.

{¶5} Under R.C. 2941.25, a defendant who commits two or more allied offenses of similar import can only be sentenced for one offense. But if allied offenses are committed with a separate animus, the defendant may be sentenced for each offense.³

{¶6} For purposes of determining whether R.C. 2941.25(A) precludes sentencing on allied offenses, the Ohio Supreme Court has held that (1) kidnapping and rape are allied offenses of similar import⁴, (2) kidnapping and aggravated robbery are allied offenses of similar import⁵, and, (3) kidnapping and gross sexual imposition are allied offenses of similar import.⁶ But the supreme court has also established guidelines to determine whether kidnapping and another offense were committed with a separate animus so as to permit separate punishments under R.C. 2941.25(B). 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

³ R.C. 2941.25(B).

⁴ See *State v. Donald* (1979), 57 Ohio St.2d 73, 74-75, 386 N.E.2d 1341, syllabus; accord *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶89-95.

⁵ See *State v. Winn*, 121 Ohio St.3d 413, 2009-Ohio-1059, 905 N.E.2d 154, ¶25.

⁶ See *State v. Brown* (1984), 12 Ohio St.3d 147, 465 N.E.2d 889.

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.⁷

{¶7} In *Logan*, the court found no separate animus to sustain separate sentences for rape and kidnapping, where, after the victim had refused to accept some pills, the “defendant produced a knife, held it to her throat, and forced her into an alley. Under such duress, she accompanied him down the alley, around a corner, and down a flight of stairs, where he raped her at knifepoint.”⁸

{¶8} Comparing the facts of each crime Bohannon committed to the facts in *Logan*, we are constrained to hold that Bohannon’s kidnapping of each victim was merely incidental to the underlying crime of rape, gross sexual imposition, and/or aggravated robbery, and that a separate animus was not demonstrated. The facts of each crime are as follows:

DM

{¶9} Bohannon was found guilty and sentenced for both raping and kidnapping DM. DM testified that he had been playing basketball with Bohannon when Bohannon threw the basketball into a dark area off the court. DM went to retrieve the basketball, and Bohannon followed him and raped DM at gunpoint. When asked how far away he had been from the basketball court when he was raped, DM testified, “[I]t was pretty much like right on the basketball court. It’s just like right behind it.”

⁷ *State v. Logan* (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus; accord *State v. Fears*, 86 Ohio St.3d 329, 344, 1999-Ohio-111, 715 N.E.2d 136 (citing *Logan* to hold that when a kidnapping is committed during another crime, there exists no separate animus where the restraint or movement of the victim is merely incidental to the underlying crime).

⁸ *Logan*, supra, at 127.

RC

{¶10} Bohannon was found guilty and sentenced for raping and kidnapping RC. RC testified that he had been walking home when Bohannon approached him on the street, pointed a gun at him, and directed him up a driveway and behind a house, where Bohannon raped him. RC testified that, from the house, he had been able to see the street he had been walking on.

DH

{¶11} Bohannon was found guilty and sentenced for raping and kidnapping DH. DH testified that he had been walking home when Bohannon approached him, pointed a gun at his head, and forced him down a driveway and down the side of a house to a storage shed next to the house. Bohannon then raped him. DH said the shed had not been very far from the road he had been taken from.

JH

{¶12} With respect to JH, Bohannon was found guilty and sentenced for kidnapping, aggravated robbery, and gross sexual imposition. JH testified that he had been walking home when Bohannon approached him and asked him for a cigarette. JH testified that they had then walked to a little lot “just barely” off of the road when Bohannon pointed a gun at him and robbed him. Bohannon then unzipped JH’s pants and fondled him.

KB

{¶13} With respect to KB, Bohannon was found guilty and sentenced for kidnapping, aggravated robbery, and gross sexual imposition. KB testified that he had been standing in the parking lot of a friend’s apartment building when Bohannon approached him, pointed a gun at him, and took him behind a shed

located near the apartment complex. There, Bohannon pulled down KB's pants and fondled his genitals. When KB's cellular telephone began ringing, two children from the apartment complex heard it and walked to the shed. This caused Bohannon to flee.

AS

{¶14} Bohannon was found guilty and sentenced for kidnapping and robbing AS. AS testified that he had been walking home when Bohannon approached him, asked him for a cigarette, and pointed a gun at him. Bohannon moved AS to the other side of the two-lane road, near the edge of the woods, and robbed him. AS then escaped.

BS

{¶15} Bohannon was found guilty and sentenced for both kidnapping and robbing BS. BS testified that he had been walking home when Bohannon ran up to him, pointed a gun at him, and started tugging on BS's coat, trying to empty the coat's pockets. Bohannon tried to pull BS to the side of a house, but BS began screaming, and the house's occupant came outside, causing Bohannon to flee.

{¶16} The facts demonstrate that, although Bohannon moved each victim to a more secluded area to rob and/or sexually attack him, the movement was merely incidental to the underlying crime. In each instance, the movement of the victim was not substantial because Bohannon had not taken the victim far from where Bohannon had found him.

{¶17} Because, with respect to each victim, kidnapping was an allied offense of similar import to the other charged offenses and was not committed separately or with a separate animus as to each offense, the trial court erred in sentencing

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Bohannon for kidnapping and the other charged offenses. Accordingly, we sustain the assignment of error, vacate the sentences, and remand the case for resentencing. In all other respects, the trial court's judgment is affirmed.

Sentences vacated and cause remanded.

SUNDERMANN and DINKELACKER, JJ., concur.

Please Note:

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