

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

STATE OF OHIO,	:	APPEAL NO. C-090102
	:	TRIAL NO. B-0000311
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
HENRY O’HARA,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial in 2000, defendant-appellant Henry O’Hara was found guilty of rape and kidnapping and was sentenced to 18 years’ imprisonment. O’Hara filed a direct appeal to this court. We affirmed O’Hara’s convictions.

In 2008, O’Hara filed with the trial court a “Motion Requesting Resentencing to Correct a Void Sentence.” In support of his motion, O’Hara argued that he had to be resentenced because the trial court had failed to inform him about the requirements of postrelease control at his original sentencing. The trial court granted O’Hara’s motion. At resentencing, the trial court appropriately informed O’Hara about postrelease control and reimposed the original sentence of 18 years’ imprisonment.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

O'Hara now appeals to this court, arguing in his sole assignment of error that he could not have been convicted of both rape and kidnapping because they were allied offenses of similar import.

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.² But if the defendant commits each offense separately or with a separate animus, then convictions may be entered for both offenses.³

The Ohio Supreme Court has provided guidance concerning whether kidnapping and another offense (in this case, rape) are 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."⁴

Following our review of the record, we conclude that the rape and kidnapping were each committed with a separate animus that justified convictions for both.

The record indicates that O'Hara approached Maureen Hicks as she was entering her van in a parking lot. O'Hara opened the door to Hicks' van and ordered her to move over. After Hicks attempted to notify others of her predicament by honking, O'Hara forced his way into the van. He ordered Hicks onto the floor of the van and proceeded to drive onto Cross-County Highway. He eventually stopped the

² R.C. 2941.25(A).

³ R.C. 2941.25(B).

⁴ *State v. Logan* (1979), 60 Ohio St.2d 126, 397 N.E.2d 1345, syllabus.

vehicle alongside the highway and forcibly performed cunnilingus upon Hicks. After raping Hicks, O'Hara drove back to the parking lot where he had first accosted Hicks.

In this case, the restraint and movement of Hicks were not merely incidental to her rape. Rather, the restraint was prolonged and the movement was substantial. O'Hara drove a distance away from the location at which he had first accosted Hicks. The rape of Hicks did not occur until he had pulled onto the side of the highway.

O'Hara committed the offenses of rape and kidnapping with a separate animus. Therefore, O'Hara was appropriately sentenced on each. The sole assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 4, 2009
per order of the Court _____.
Presiding Judge