

[Cite as *State v. Garrett*, 2009-Ohio-4584.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO :  
Plaintiff-Appellee C.A. CASE NO. 2008 CA 102  
v. : T.C.  
NO. 2008 CR 676  
JAMES V. GARRETT : (Criminal appeal from  
Common Pleas Court)  
Defendant-Appellant :  
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**OPINION**

Rendered on the 4<sup>th</sup> day of September, 2009.

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Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of James V. Garrett, filed December 3, 2008. In November, 2008, Garrett was convicted, following a jury trial in Greene County, of one count of kidnaping, in violation of R.C. 2905.01(B)(2), a felony of the first degree, one count of felonious assault, in violation of R.C. 2903.11(A)(2), a felony of the second degree, and one count of felonious assault, in violation of R.C. 2903.11(A)(1), a felony of the second degree. The victim was Garrett's girlfriend, Amanda Wissler. The trial court sentenced Garrett to a definite term of 10 years on the kidnaping charge, and it merged the felonious assault charges for purposes of conviction and sentencing, imposing an eight year consecutive term for a total sentence of 18 years.

{¶ 2} Counsel for Garrett has filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, asserting the absence of any non-frivolous issues for our review. Counsel, however, has set forth one potential assignment of error, challenging the sufficiency of the evidence. Despite being given the opportunity to file his own brief, Garrett has not done so. The State filed a "Notice of Intent not to File Response to Anders Brief."

{¶ 3} Upon review of this record, we conclude that counsel's proposed assignment of error is frivolous. "In reviewing a claim of insufficient evidence, '[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541." *State v. McKnight*, 107 Ohio St.3d 101, 112, 837 N.E.2d 315, 2005-Ohio-6046, ¶ 70.

{¶ 4} R.C. 2905.11(B)(2), which proscribes kidnaping, provides, “(B) No person, by force, threat, or deception, \* \* \* by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim \* \* \* : \* \* \* (2) Restrain another of the other person’s liberty.”

{¶ 5} R.C. 2903.11 proscribes felonious assault and provides: “(A) No person shall knowingly do either of the following: (1) Cause serious physical harm to another \* \* \* (2) Cause or attempt to cause physical harm to another \* \* \* by means of a deadly weapon \* \* \* .”

{¶ 6} At trial, Wissler testified that Garrett, on August 26, 2008, between midnight and 1:00 a.m., punched her, choked her, stabbed her leg with a screwdriver and beat her with a two-by-four in the bedroom of their apartment, in the Fairborn Apartments. When Wissler tried to leave the room, Garrett blocked her path and pushed her back down on the bed.

{¶ 7} Wissler’s mother and half-brother arrived at her apartment around 7:00 p.m. for a visit on the day Wissler was injured, and they observed her injuries. Wissler, as instructed by Garrett, had unsuccessfully attempted to cover her injuries with makeup. Wissler told her family that she “had fell off my bike and got bee stung.” Wissler testified that her family left the apartment, returning a short time later to invite her to go to dinner. Wissler testified that Garrett told her that she could not go with them.

{¶ 8} Christopher Perkins, Wissler’s half-brother testified that he and his mother left Wissler’s apartment upon seeing her injuries and went to the Fairborn Police Department to report their observations. They then returned to her apartment, and they invited her to dinner so that they could take her to the police station without Garrett’s knowledge. When Wissler indicated that she could not go with them, Perkins and his mother remained in the area, talking to Wissler’s neighbors who were sitting outside. According to Perkins, Garrett then came outside and

threatened to kill them if they did not leave the property. Perkins called the police.

{¶ 9} Officer Daniel Foreman of the Fairborn Police Department testified that he was the first to respond to the scene. Upon arrival, Foreman noticed Garrett yelling at Perkins and his mother. Garrett refused to calm down, and Foreman had to threaten to use his taser before Garrett complied with Foreman's commands to be quiet. Foreman described Garrett as "loud, menacing, threatening." After placing Garrett in his cruiser, Foreman spoke to Wissler. He described her as follows: "She had bruising about her face and head and neck and ear and hands and she just - - she was physically slumped forward. She just looked broken. She just looked like she had been beat, and in fact, that was my opinion. It was consistent with what I've seen in the past with my 13 years experience, and, in fact, it was the worst I had seen in my 13 years. She just looked like she had been beat." Foreman described the wounds on Wissler's hand as "defensive type wounds if somebody is trying to defend themselves from an attack."

{¶ 10} Aaron Davies of the Miami Valley Regional Crime Laboratory testified that he retrieved Garrett's fingerprints from the two-by-four that Garrett used to beat Wissler. Davies did not retrieve any prints from the screwdriver that was recovered from the scene.

{¶ 11} At the close of the State's evidence, Garrett testified on his own behalf. According to Garrett, "Amanda is the type that she's real humble and she don't pay no attention to her surroundings at times, you know, and I was trying to toughen her up, you know, like get on her P's and Q's a little bit, and that's been why I wrestle with her a lot.

{¶ 12} "So we was on the bed \* \* \* and like the dresser is right here and she come over the top of me and when she come over the top of me she hit her head on the dresser and then she said 'Ouch,' like she hollered. I said, 'Dang.' She said, 'Baby, don't worry, don't worry,' like that. She said, 'I know you didn't try to do that.'"

{¶ 13} When Garrett observed Perkins and his mother talking to his neighbors outside, he was angry that Wissler's family was talking about him and Wissler to strangers. He testified, "“Why are you asking the neighbors about things about us,’ you know. I mean, nobody don't know us. All we do is go to work and come in and just stay away from people because every day the Police is coming out there, I mean, arresting somebody, you know, or somebody is breaking into your house, you know. \* \* \*”"

{¶ 14} In contrast to the above testimony, when asked about the photographs of Wissler's bruises, Garrett testified, "“Like every evening we go outside and all the neighborhood kids come up and we'll be on the back porch playing handball, so we'd be all over the ground. I mean like we would be after this little old ball and we trip over people, I mean, you know, and they play kickball, we're playing baseball, we're throwing a rubber baseball.

{¶ 15} "“Well, the little kids, if they can't tag you, they'll throw it at you, you know. We were doing that like every evening. I mean, there's a lot of bruises that come from that. \* \* \*”"

{¶ 16} Garrett also testified that Wissler frequently ran into their bicycles that were stored in the hallway of their apartment, resulting in bruising on her legs.

{¶ 17} After reviewing the evidence in a light most favorable to the State, we conclude that any rational juror could have concluded that Garrett kidnaped and assaulted Wissler. In other words, there was substantial probative evidence presented as to each of the elements of kidnaping and felonious assault from which the jury could find Garrett guilty beyond a reasonable doubt. It is clear that the jury believed Wissler's testimony that Garrett attacked her, inflicting multiple injuries and restraining her liberty. Wissler's testimony was consistent with Perkins' and Foreman's. Garrett's testimony, in contrast, was on its face self-serving and inconsistent, and any rational juror could have discounted it. Further, Garrett's fingerprints were retrieved from the

two-by-four.

{¶ 18} Pursuant to our responsibilities under *Anders*, we independently have reviewed the record in this case. Having done so, we agree with the assessment of appointed appellate counsel that there are no non-frivolous issues for our review. The judgment of the Greene County Common Pleas Court is affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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