

[Cite as *State v. Gray*, 2011-Ohio-101.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94611**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DARNELL GRAY**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-526428

**BEFORE:** Gallagher, P.J., Kilbane, A.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** January 13, 2011  
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SEAN C. GALLAGHER, P.J.:

{¶ 1} Appellant, Darnell Gray, appeals his conviction in the Cuyahoga County Court of Common Pleas for sexual battery and abduction. For the reasons stated herein, we affirm the judgment of the trial court.

{¶ 2} Gray was convicted of the above offenses, as well as one count of felonious assault, which has not been challenged on appeal. He was sentenced to a total prison term of four years.

{¶ 3} At the bench trial, the victim testified that she and Gray were in a consensual relationship in 2008 and 2009, with no prior instances of violence. On July 11, 2009, she stopped at a bar after attending a party for her mother.

Several of her friends were at the bar, and Gray also happened to be there. She left the bar with Gray and two other individuals. They proceeded to drive around and make several stops that evening, encountering various friends. Gray was being affectionate toward the victim and mentioned parking somewhere to have sex. The victim testified that she declined.

{¶ 4} When she accidentally drove past the house where she was to drop off a friend, the victim backed into the driveway of an abandoned house. She was on the phone at the time. Gray took the keys out of the ignition and grabbed the victim's phone. Two other male friends got out of the car and told the victim she "might as well go ahead and have sex [with Gray] in the car." These witnesses testified to their impression that Gray and the victim were looking for a place to have sex that night.

{¶ 5} The victim testified she responded that she was not interested in having sex in the car. The victim asked for her keys and phone back, but Gray kept saying "we're not going nowhere until we have sex." The other two individuals left, and Gray began making physical advances on the victim.

{¶ 6} The victim testified that she pushed Gray away and when she tried to get out of the car, Gray punched her in the face. Two of the victim's teeth were knocked loose, one protruded through her lip, and she began bleeding profusely from her mouth. She went to knock on the door of a house, and Gray forced her back into the car. She asked Gray to take her home, but he said "no, you're not

going nowhere until we have sex.” She testified Gray was drunk and his speech was slurred.

{¶ 7} They then drove into a school parking lot near a dumpster. The victim testified that Gray removed her underwear and forced her to have sex while keeping his hand around her neck. He then asked for oral sex. However, the victim was able to escape, and ran to her aunt’s house, which was nearby. She began banging on the doors and windows until her cousin answered the door. The victim told her cousin and her aunt, “he raped me.” They observed that the victim was bloody, shaking, crying, and visibly upset.

{¶ 8} EMS was called, and the victim was taken to the hospital. A responding officer testified that the victim was in a fetal position and crying when he arrived. It took her five to ten minutes to calm down. He observed that her teeth were pushed back and she was bleeding from the mouth. She also had a red mark and swollen knot on the back of her neck.

{¶ 9} Gray testified that he and the victim drove around that evening and were looking for a place to have sex. He admitted to being under the influence of alcohol. He stated that the victim got mad at him during a discussion concerning something that had happened earlier, that the victim hit him, and that his reaction was to hit her back. He claimed he did not intend to injure the victim, and that they apologized to each other. He stated that he did not force the victim to have sex and that the sex was consensual.

{¶ 10} During the booking process, Gray told officers that he saw the victim at the bar, but he did not leave with her and had not had sex with her lately. Police observed that Gray had swollen knuckles on his right hand and a scratch on his shoulder.

{¶ 11} Gray has appealed his conviction for sexual battery and abduction. His sole assignment of error is that the trial court erred in denying his Crim.R. 29 motion for acquittal when there was insufficient evidence to prove the elements of these crimes.

{¶ 12} A motion for acquittal under Crim.R. 29(A) is governed by the same standard used for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37. “The relevant inquiry is whether, after viewing 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. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” (Citations and quotations omitted.) *Id.*

{¶ 13} The sexual battery statute, R.C. 2907.03, provides in pertinent part: “(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.”

{¶ 14} The abduction statute, R.C. 2905.02, provides in pertinent part: “(A) No person, without privilege to do so, shall knowingly do any of the following: (1) By force or threat, remove another from the place where the other person is found; (2) By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear[.]”

{¶ 15} In this case, the victim testified she did not want to have sex with Gray and she refused his requests and demands to do so. Despite her refusal, Gray took her keys and phone, punched her in the mouth, forced her back into the car, told her she was not going home until they had sex, and forced her to have sex while holding her neck. The victim had visible injuries to her mouth and neck. Further, the observations of the police and the victim’s family members corroborated her version of events.

{¶ 16} While Gray claimed the sex was consensual, and the defense presented witnesses who were under the impression that the two were looking for a place to have sex, a rational trier of fact could have found this testimony unconvincing. Further, the defense witnesses did not observe the confrontation between Gray and the victim or the events that occurred thereafter. Also, to the extent Gray points to a few inconsistencies in the details reported by the victim and her testimony at trial, they do not render his conviction against the sufficiency of the evidence.

{¶ 17} A review of the record in this case, when viewed in a light most favorable to the prosecution, shows that any rational trier of fact could have found the essential elements of the crimes proven beyond a reasonable doubt.<sup>1</sup>

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, A.J., and  
MELODY J. STEWART, J., CONCUR

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<sup>1</sup> Though not raised, we note that the offenses are not mergeable as allied offenses of similar import as the offenses were separate acts committed with a separate animus.