

[Cite as *State v. Hudson*, 2010-Ohio-839.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 09-CA-01
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-678
v.	:	
	:	(Criminal Appeal from
WILLIE HUDSON	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of March, 2010.

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AMY SMITH, Atty. Reg. #0081712, Clark County Prosecutor’s Office, 50 East Columbia Street, P.O. Box 1608, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

KENT J. DePOORTER, Atty. Reg. #0058487, and SHA HINDS-GLICK, Atty. Reg. #0080822, 7501 Paragon Road, Dayton, Ohio 45459
Attorneys for Defendant-Appellant

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BROGAN, J.

{¶ 1} This case is before us on Willie Hudson’s appeal of his conviction and sentence for aggravated robbery and abduction. We appointed counsel to assist Hudson with his appeal, and on August 3, 2009, counsel filed a brief under *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, in which counsel stated that, after thoroughly reviewing the record, he could find no issue that merits

our review. On September 30, 2009, we told Hudson of counsel's conclusion and gave him sixty days in which to file a pro-se brief assigning any errors. Hudson did not file a brief within the time we provided. But, on January 27, 2010, while we were considering his timely appeal, Hudson filed a Motion for Delayed Appeal and later, an appellate brief, in which he raised two issues. Procedurally, granting him some pro-se leeway, since Hudson's case was already on appeal, we will review his motion and his appellate brief and will consider the issues he raises. It is our *Anders* responsibility to "conduct a full examination of all the proceeding(s) to decide whether the case is wholly frivolous." *Penson v. Ohio* (1988), 488 U.S. 75, 80, 109 S.Ct. 346, 102 L.Ed.2d 300 (Citation omitted). After carefully reviewing the record in this case, we agree with appointed counsel that there is no nonfrivolous issue for appeal.

{¶ 2} On Sunday evening, July 20, 2008, the victim, who we will refer to as K.K., drove in her father's sport-utility vehicle (SUV) herself and three friends—Cheryl Palmer, Jon Watkins, and Kelvin Cobb—to the Clark County Fair, near Springfield, Ohio. While there, K.K. told Palmer that she planned on buying her own car soon and paying for it with cash.

{¶ 3} After leaving the fair, K.K. dropped off Cobb at his home, then dropped off Palmer, and finally drove back to Cobb's house where she dropped off Watkins. K.K. then drove home. Shortly before she arrived home, she received a call on her cell phone from Watkins, who said that he could not stay at Cobb's house and no one else could give him a ride home. K.K. agreed to return to Cobb's house to pick him up and drive him home. When she arrived back at Cobb's, Watkins came up to her vehicle and opened the passenger-side door. He paused before getting in and

told K.K. that he forgot his cell phone in Cobb's house. Watkins then walked away.

{¶ 4} Suddenly, three men were at the driver's-side door, one of whom was pointing a gun at K.K. Each man wore a dark-colored bandana on his face and a hat on his head. The one holding the gun opened the door and told K.K. to get into the passenger seat. The one with the gun then got into the driver's seat, and the other two men got into the back seat. Watkins reappeared and he too got into the back seat; he was the only one of the four that K.K. recognized.

{¶ 5} They drove off and the driver passed the gun to the back seat, where the three men passed the gun around. The men in the back all shouted violent threats at her, for example, they told her they would shoot her in the head and throw her body in the river. Eventually, the driver stopped the car, and they forced K.K. out and held her at gunpoint while they searched the car for money. Not finding any, they all got back into the car and drove off. Later they again stopped and searched the car. This time they ripped out the stereo system. At some point, they also took K.K.'s Blackberry cell phone. Becoming frustrated, they told her that they would let her go but that she was to bring them \$5,000. K.K. took off alone and immediately flagged down a police officer and told the officer her story.

{¶ 6} The police investigation of her case led to a residence on 119 East Cassilly Street in Springfield. There, they found Watkins, another man who it was later determined was one of K.K.'s assailants, and Hudson. Police also found dark-colored bandanas. In Hudson's room they found a safe. Hudson gave police permission to open the safe and gave them the key and combination. Inside, police found, among other things, another bandana, Hudson's identification and birth

certificate, and K.K.'s Blackberry cell phone. The investigation also led just down the street to 43 East Cassilly, where police found a handgun matching the description K.K. gave them—Hudson was there too. He was soon arrested.

{¶ 7} A grand jury issued a six-count indictment of Hudson—aggravated robbery (deadly weapon), R.C. 2911.01(A)(1), robbery (physical harm), R.C. 2911.02(A)(2), robbery (use of force), R.C. 2911.02(A)(3), kidnaping, R.C. 2905.01(A)(2), kidnaping, R.C. 2905.01(B), and abduction, R.C. 2905.02(A)(2); each count was accompanied by a firearm specification. After a trial, the two kidnaping charges were dismissed, and a jury found Hudson guilty of the remaining four. The trial court merged the three robbery convictions for sentencing purposes and sentenced Hudson to ten years in prison for robbery. The court also sentenced him to a five-year, concurrent prison sentence for abduction. Finally, the court imposed a three-year, consecutive sentence for the firearm specifications.

{¶ 8} Appointed counsel raises the possible issue that the verdicts are against the manifest weight of the evidence. See *State v. Thompkins* (1997), 78 Ohio St.3d 380. We find no merit in this issue based on Hudson's own testimony. Hudson admitted he was one of the men in the back seat during the robbery and abduction. He admitted there was a gun involved. When interviewed at the police station, Hudson admitted being one of the three masked men but denied there was a gun. At trial, however, Hudson conceded that he lied to police about the presence of a gun. But, he asserted, the gun was never passed around. Also, police found the victim's cell phone in Hudson's safe. In his defense, Hudson testified that he did not willingly participate in the robbery and abduction, that the actions of his friends

were completely unexpected. Hudson said that he sat in the SUV while the others searched it, and he said that he was so disgusted by his friends' actions that he left before they let K.K. go. K.K., though, testified that all four men participated and all four were there when she left.

{¶ 9} There is no evidence, save his own testimony, that supports Hudson's claim that he was an unwilling participant. And whether the gun was ever in his hands that night is immaterial. It is syllabus law that "[a]n individual indicted for and convicted of R.C. 2911.01, aggravated robbery, and R.C. 2941.141, a firearm specification, is subject to a mandatory three-year term of actual incarceration under R.C. 2929.71, regardless of whether he was the principal offender or an unarmed accomplice." *State v. Chapman* (1986), 21 Ohio St.3d 41, at the syllabus. Hudson admitted that one of the men with him had a gun; no more evidence is needed.

{¶ 10} The two issues that Hudson raised in his "delayed pro-se brief" were, first, that the indictment was not signed by the grand-jury foreman and, second, that because there is no direct evidence placing the gun in his hands there should have been more emphasis put on simple robbery charges rather than aggravated robbery.

Regarding the first issue, we examined the indictment in the record and see that the foreman did in fact sign his name to it. And we considered the second issue sufficiently in the previous paragraph.

{¶ 11} Therefore, finding no procedural or substantive irregularities, finding the evidence supporting the jury's verdicts sufficient, and finding that the jury's verdicts are not contrary to the manifest weight of the evidence, Hudson's conviction and sentence are Affirmed.

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FAIN and FROELICH, JJ., concur.

Copies mailed to:

Amy M. Smith
Kent J. DePoorter
Sha Hinds-Glick
Willie Hudson
Hon. Douglas M. Rastatter