

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

STATE OF OHIO	:	
	:	Appellate Case No. 23283
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CRB-18709
v.	:	
	:	(Criminal Appeal from
TORRI GIST	:	Dayton Municipal Court)
	:	
Defendant-Appellant	:	
	:	
	:	

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OPINION

Rendered on the 4th day of June, 2010.

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JOHN J. DANISH, Atty. Reg. #0046639, by STEPHANIE L. COOK, Atty. Reg. #0067101, City of Dayton Prosecutor's Office, 335 West Third Street, Dayton, Ohio 45402
Attorney for Plaintiff-Appellee

ADAM JAMES STOUT, Atty. Reg. #0080334, 2533 Far Hills Avenue, Dayton, Ohio 45419
Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Torri Gist appeals from her conviction and sentence for Menacing. Her assigned appellate counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that after thoroughly examining the record and the law, he found no potentially

meritorious issues for appeal. We informed Gist that her attorney had filed an *Anders* brief on her behalf and granted her sixty days from that date in order to file a pro se brief. Gist has not filed a pro se brief.

{¶ 2} Pursuant to our duty under *Anders*, we have conducted an independent review of the entire record, and we have found no potential assignments of error having arguable merit. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 3} In May, 2008, Gist complained to her supervisor that a co-worker, Cranisha Allen, told the father of Gist's children where Gist lived, which caused Gist to fear for her safety. Allen denied this. Nothing further happened at that time, and Allen believed that the matter was dropped.

{¶ 4} Six months later, on the afternoon of November 21, 2008, Allen was on her way to an employee luncheon with several other co-workers when she encountered Gist on the elevator. As Allen left the elevator, Gist repeatedly yelled out her name. Allen ignored Gist and kept walking. Gist got in front of Allen and confronted her, getting very close to Allen's face. Gist loudly demanded, "Why did you tell that bitch where I work at." Allen tried to ignore Gist and walk away. Gist screamed, "Bitch I'll beat your ass." Allen asked Gist to leave her alone, and Allen managed to get around Gist. However, Gist followed Allen, continuing to yell, "Come on bitch come get this ass whooping." Gist got in front of Allen a second time, continuing to yell at her. Allen continued to ask Gist to leave her alone, but Gist kept yelling. Allen stopped responding, and Gist finally left. After work, Allen

asked someone to escort her to car in case Gist was waiting for her in the parking lot.

When Allen got home that evening, she called the police to report the incident. The following day, Allen obtained a temporary protection order against Gist.

{¶ 5} A complaint for Menacing was filed against Gist, and the case proceeded to a bench trial. Allen's testimony was corroborated by two co-workers, Kysha Cross and Rachelle Spencer, both of whom witnessed Gist's behavior. Gist testified on her own behalf, denying that she threatened Allen. The trial court found Gist guilty, and sentenced her accordingly. From her conviction and sentence, Gist appeals.

II

{¶ 6} Under the authority of *Anders v. California*, supra, appellate counsel has identified one potential assignment of error that he considered before concluding that it has no arguable merit. The potential assignment of error is as follows: "The trial court may have improperly admitted testimonial evidence regarding bad acts by the Appellant."

{¶ 7} Gist was convicted of Menacing, in violation of R.C. 2903.22(A), which states: "No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person * * *." The complainant's belief that the offender will cause him physical harm is an element of the offense of Menacing. *State v. Denis*, 112 Ohio App.3d 397, citing *State v. Wilson* (1995), 102 Ohio App.3d 1, 4. For that reason, testimony that might otherwise be inadmissible under Evid.R. 404 may be admissible in a Menacing case in order to prove the complainant's belief that the defendant was actually going to

cause physical harm. See, e.g., *State v. Manley*, Montgomery App. No. 20229, 2004-Ohio-4930, ¶39.

{¶ 8} During Allen’s testimony, she explained that she believed that Gist would beat her up because “[s]he’s bigger than me. She’s done it before.” Over Gist’s objection, Allen clarified that she was aware that Gist had previously assaulted one of Allen’s friends. We agree with appellate counsel that under the circumstances of this case, there is no potential merit in the argument that this testimony should have been excluded. Gist’s prior bad act concerning which Allen testified gave credence to Gist’s threat, supporting Allen’s fear that Gist would cause her to suffer physical harm; thus, it was properly admitted for that purpose, not in an attempt to prove that on this occasion Gist acted in conformity with her prior bad act. See, e.g., *Manley*, supra, at ¶40.

III

{¶ 9} We have performed our duty, under *Anders v. California*, supra, to review the record independently. We have found no potential assignments of error having arguable merit. Therefore, we conclude that this appeal is wholly frivolous, and affirm the judgment of the trial court.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

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Torri Gist
Hon. Daniel G. Gehres