

[Cite as *State v. Wilson*, 2010-Ohio-4146.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23700
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2009-CR-719
v.	:	
	:	
DONYAE WILSON	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 3rd day of September, 2010.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg.#0020084, and
ANDREW FRENCH, Atty. Reg. #0069384, Montgomery County Prosecutor’s Office,
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BROGAN, J.

{¶ 1} Donyaе Wilson appeals from his conviction of four counts of felonious assault in violation of R.C. 2903.11(A)(1) and (A)(2) with firearm specifications. Wilson’s appointed counsel has submitted an *Anders* brief asserting that he could

find no arguable merit to this appeal. Wilson has been notified of his counsel's findings and he was given an opportunity to submit his own brief. Wilson did not avail himself of that opportunity.

{¶ 2} The State presented evidence that on December 27, 2008 at 9:00 p.m., four security guards, James Locker, Dwight Carter, Matt Jankson and Gary Pennington were on routine patrol in Northland Village in Montgomery County when they encountered Donyae Wilson who had been "trespassed" from the neighborhood. As the guards began to exit the vehicle they were in, Wilson began to walk away. Suddenly, Wilson began firing a long-barreled handgun at the officers striking the vehicle. One round struck the shoulder of Dwight Carter who was sitting in the front passenger seat of the vehicle. Locker immediately drove the vehicle away and the officers informed the Montgomery County Sheriff's deputies that the assailant was Donyae Wilson.

{¶ 3} Hours later, Wilson was arrested near the Northland Village apartments. Detective Brad Daugherty interviewed Wilson who denied being involved in the shootings. Wilson told Daugherty that he was outside all night "hanging out in the area of Embassy Place." (Tr. 273.) Daugherty tried to get Wilson to be more specific about who he was with but Wilson would not provide Daugherty with that information. Daugherty also testified Wilson could not be more specific about his whereabouts at the time of the shootings. (Tr. 275.)

{¶ 4} Wilson's appointed lawyer suggests the trial court may have erred in overruling Wilson's counsel's objection to the following comment made by the prosecutor in his final argument:

{¶ 5} “[Appellant Wilson] was nowhere else but at the scene of the crime, a mere hundreds of yards away with no explanation for where he was when the crime was committed, and was afforded every opportunity to give an explanation.”

{¶ 6} Wilson’s counsel suggests that the prosecutor’s argument was an improper comment on Wilson’s right to remain silent. We disagree. The prosecutor’s comment was made in reference to Wilson’s failure to be more specific as to his whereabouts at the time of the crime.

{¶ 7} In *State v. Blackman*, Cuyahoga App. No. 88608, 007-Ohio-4168, the Cuyahoga County Court of Appeals held that it was proper for the prosecutor to cross-examine the defendant about matters he did not tell the police in a post-mirandized written statement. The court recognized that when a defendant voluntarily provides a statement to the police, those statements are subject to impeachment. In addition to impeachment, the prosecutor is free to comment on the failure of a defendant to fully explain his whereabouts at the time of the crime when giving a statement to the police. Wilson did not testify in his own defense and the trial court appropriately instructed the jury it could not consider his failure to testify for any purpose.

{¶ 8} The trial court sentenced Wilson to three consecutive three-year terms on the counts charging him with felonious assault (deadly weapon). On the felonious assault conviction involving serious physical harm, the court merged the deadly-weapon count involving Dwight Carter into the serious physical harm count. The trial court also merged all the firearm specifications into a single three-year conviction and sentence. The sentence imposed upon Wilson was within statutory

limits and was appropriate.

{¶ 9} We agree with the appellant's appointed counsel that Wilson's appeal is wholly frivolous. We have conducted an independent review of the record as required. See *Anders v. California* (1967), 386 U.S. 738. Finding no arguable merit to this appeal, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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Donyae Wilson
Hon. Timothy N. O'Connell