

[Cite as *State v. Kendrick*, 2011-Ohio-212.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-100141
		C-100142
Plaintiff-Appellee,	:	TRIAL NOS. 09CRB-29372
		09CRB-29373
vs.	:	
		<i>DECISION.</i>
LEAH KENDRICK,	:	
Defendant-Appellant.	:	

**Criminal Appeals From: Hamilton County Municipal Court**

**Judgments Appealed From Are: Affirmed**

**Date of Judgment Entry on Appeal: January 21, 2011**

*John P. Curp*, Cincinnati City Solicitor, *Ernest F. McAdams, Jr.*, City Prosecutor, and *Karla J. Burtch*, Senior Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Scott A. Rubenstein* and *Rubenstein & Thurman, L.P.A.*, for Defendant-Appellant.

**SYLVIA SIEVE HENDON, Judge.**

{¶1} Following a bench trial, defendant-appellant Leah Kendrick was convicted of two counts of menacing in violation of R.C. 2903.22, both misdemeanors of the fourth degree.<sup>1</sup> These appeals followed.

{¶2} In her first assignment of error, Kendrick now argues that the trial court lacked jurisdiction to proceed on the menacing complaints because each was filed by a private citizen without having been reviewed by an appropriate official, such as a judge, a prosecuting attorney, or a magistrate, as required by R.C. 2935.09. Kendrick contends that the issue of the trial court’s jurisdiction is properly before this court because “jurisdictional defects cannot be waived.” This is true for subject-matter jurisdiction, but not necessarily for personal jurisdiction.

{¶3} The term “jurisdiction” refers to a court’s statutory or constitutional authority to hear a case.<sup>2</sup> The concept encompasses jurisdiction over the subject matter as well as jurisdiction over the person.<sup>3</sup> Because subject-matter jurisdiction involves a court’s power to hear a case, the issue can never be waived or forfeited.<sup>4</sup> Thus, the lack of subject-matter jurisdiction may be raised at any time, even for the first time on appeal.<sup>5</sup>

{¶4} On the other hand, a challenge to “personal jurisdiction,” or jurisdiction over the person, may be waived.<sup>6</sup> A defendant waives any objection to a court’s

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<sup>1</sup> See R.C. 2903.22(B).

<sup>2</sup> See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶11; *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S.Ct. 1781, citing *Steel Co. v. Citizens for a Better Environment* (1998), 523 U.S. 83, 89, 118 S.Ct. 1003.

<sup>3</sup> *Pratts*, supra, citing *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, 769 N.E.2d 846, ¶22.

<sup>4</sup> See *Pratts*, supra; *Cotton*, supra.

<sup>5</sup> See *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998-Ohio-275, 701 N.E.2d 1002.

<sup>6</sup> See *United States v. Rosenberg* (C.A.2, 1952), 195 F.2d 583; *State v. Holbert* (1974), 38 Ohio St.2d 113, 118, 311 N.E.2d 22.

jurisdiction over his person where he voluntarily submits to the trial court's jurisdiction at an initial appearance or by entering a plea of not guilty.<sup>7</sup>

{¶5} In this case, we must decide whether the municipal court had jurisdiction over the menacing charges. Municipal courts are created by statute,<sup>8</sup> and their subject-matter jurisdiction is set by statute.<sup>9</sup> With respect to criminal matters, municipal courts have jurisdiction over misdemeanors occurring within their territorial jurisdiction.<sup>10</sup> Thus, the Hamilton County Municipal Court has subject-matter jurisdiction over misdemeanors alleged to have occurred within Hamilton County.<sup>11</sup>

{¶6} The jurisdiction of the municipal court is invoked by the filing of a complaint.<sup>12</sup> Under Crim.R. 3, a complaint is a written statement of the essential facts constituting the offense charged. In addition, the rule requires that the complaint state the numerical designation of the applicable statute or ordinance, and that it be made upon oath before any person authorized by law to administer oaths.<sup>13</sup>

{¶7} Kendrick, charged with two misdemeanor offenses committed within Hamilton County, was subject to the Hamilton County Municipal Court's subject-matter jurisdiction. Moreover, the court acquired personal jurisdiction over Kendrick when she initially entered her pleas of not guilty.<sup>14</sup>

{¶8} But Kendrick argues that the affidavits signed by the complaining witnesses were not reviewed by an appropriate official, and that the cases had been "initiated in direct contravention of the law." However, Crim.R. 12(C) requires that

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<sup>7</sup> *Holbert*, supra; *State v. Jones* (1991), 76 Ohio App.3d 604, 606, 602 N.E.2d 751.

<sup>8</sup> R.C. 1901.01.

<sup>9</sup> See *Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶7.

<sup>10</sup> R.C. 1901.20(A)(1).

<sup>11</sup> See *Jones*, supra, at 606; see, also, R.C. 1901.02(B).

<sup>12</sup> *Zanesville v. Rouse*, 126 Ohio St.3d 1, 2010-Ohio-2218, 929 N.E.2d 1044, ¶5.

<sup>13</sup> Crim.R. 3.

<sup>14</sup> *Holbert*, supra, at 118.

objections based on defects in the institution of the prosecution be raised prior to trial.<sup>15</sup> Because she failed to raise the issue prior to trial, Kendrick waived any objection.

{¶9} The complaint for each menacing charge was, on its face, valid under Crim.R. 3. The complaints were signed by the victims of Kendrick's conduct, and they were sworn before a deputy clerk who was authorized to administer oaths.<sup>16</sup> The complaints were based upon the victims' affidavits in which they asserted that Kendrick had caused them to believe that she would cause them physical harm. We cannot look behind the complaints because Kendrick failed to raise the issue of the validity of the complaints prior to trial, and there is thus nothing in the record to indicate any deficiency.<sup>17</sup> Because the complaints satisfied the requirements of Crim.R. 3, the jurisdiction of the trial court was properly invoked. Accordingly, we overrule the first assignment of error.

{¶10} In her second assignment of error, Kendrick argues that trial counsel was ineffective for failing to move for dismissal of the menacing charges because the trial court lacked jurisdiction. Reversal of a conviction for ineffective assistance requires that the defendant show that counsel's performance was deficient and that the deficient performance prejudiced the defense.<sup>18</sup> To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the proceeding would have been different.<sup>19</sup>

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<sup>15</sup> Crim.R. 12(C)(1).

<sup>16</sup> See R.C. 2303.07 and 2303.05.

<sup>17</sup> See Crim.R. 12(C)(1).

<sup>18</sup> See *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraph two of the syllabus.

<sup>19</sup> *Strickland*, supra, at 694; *Bradley*, supra, paragraph three of the syllabus.

{¶11} Trial counsel's representation is presumed effective,<sup>20</sup> and this presumption is not overcome here. We have already held that the trial court had both personal and subject-matter jurisdiction in this case, so Kendrick cannot demonstrate that counsel's performance was deficient for failing to move for dismissal based upon a lack of jurisdiction. Accordingly, we overrule the second assignment of error.

{¶12} In her third and fourth assignments of error, Kendrick argues that her convictions were based upon insufficient evidence and were against the manifest weight of the evidence. In a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt.<sup>21</sup> In reviewing a challenge to the weight of the evidence, we sit as a "thirteenth juror."<sup>22</sup> We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty.<sup>23</sup>

{¶13} To find Kendrick guilty of menacing in violation of R.C. 2903.22, the trier of fact had to find that she had knowingly caused another to believe that she would cause physical harm to that person. At trial, the state presented evidence that Kendrick held a Taser and "actually sparked it a couple of times" as she approached Michael Solomon and Florence Daniels. Kendrick told Solomon repeatedly that she "would get" him, and she told Daniels that she would kill her. Both thought that Kendrick would hurt them. A police officer who responded to the scene testified that Daniels and Solomon were visibly shaken and nervous.

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<sup>20</sup> *Strickland*, *supra*, at 690.

<sup>21</sup> See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

<sup>22</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

<sup>23</sup> *Id.*

{¶14} For the defense, Kendrick’s sister testified that she did not see Kendrick holding a Taser and that Kendrick had not made any threats.

{¶15} Although Kendrick’s sister provided a different version of the events, the weight to be given the evidence and the credibility of the witnesses were primarily for the trier of fact to determine.<sup>24</sup> Moreover, our review of the record does not persuade us that the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding Kendrick guilty of the offenses.

{¶16} In addition, we hold that a rational trier of fact could have found that the state had proved beyond a reasonable doubt that Kendrick had committed the menacing offenses. Therefore, the evidence presented was legally sufficient to sustain Kendrick’s convictions. Accordingly, we overrule the third and fourth assignments of error.

{¶17} In her fifth assignment of error, Kendrick argues that prosecutorial misconduct during closing argument deprived her of a fair trial. She contends that the prosecutor improperly commented on her refusal to testify.

{¶18} In closing argument, the prosecutor said, “You had a chance to watch the defendant’s demeanor in the court. She doesn’t take the stand, but she doesn’t need to. You can see her, rolling her eyes, making sounds, shaking her head back and forth. That type of behavior is exactly the type of behavior described by the State’s witnesses.” Even if the remark was improper, Kendrick suffered no prejudice warranting reversal because the trial court sustained defense counsel’s objection to the comment.<sup>25</sup> Moreover, Kendrick was tried before the bench and not before a jury. There is a

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<sup>24</sup> See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

<sup>25</sup> See *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶94.

presumption in a bench trial in a criminal case that the court considered only the relevant, material, and competent evidence in arriving at its judgment.<sup>26</sup>

{¶19} The record reveals no evidence to show that the trial court considered the state's remark in rendering its decision; the record shows only that the court rejected the comment. Consequently, we cannot say that the remark prejudicially affected Kendrick's substantial rights.<sup>27</sup> Accordingly, we overrule the fifth assignment of error.

{¶20} In her sixth assignment of error, Kendrick argues that her right to a fair trial was compromised by cumulative error. Since Kendrick has failed to demonstrate any error, we overrule this assignment of error.<sup>28</sup> Accordingly, we affirm the trial court's judgment.

Judgments affirmed.

**CUNNINGHAM, P.J., and DINKELACKER, J., concur.**

Please Note:

The court has recorded its own entry on the date of the release of this decision.

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<sup>26</sup> *State v. Post* (1987), 32 Ohio St.3d 380, 384, 513 N.E.2d 754.

<sup>27</sup> *State v. Smith* (1984), 14 Ohio St.3d 13, 14, 470 N.E.2d 883.

<sup>28</sup> See *State v. DeMarco* (1987), 31 Ohio St.3d 191, 509 N.E.2d 1256, paragraph two of the syllabus.