[Cite as *State v. Shedwick*, 2012-Ohio-2270.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-709 (C.P.C. No. 10CR-7008)
David A. Shedwick,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 22, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

W. Joseph Edwards; David A. Shedwick, pro se.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, David A. Shedwick ("appellant"), appeals from his convictions in the Franklin County Court of Common Pleas on charges of aggravated burglary, aggravated robbery, and firearms specifications. For the reasons that follow, we affirm.

{¶ 2} On December 27, 2009, Columbus police officers arrested Alyssa Weant ("Alyssa"), who was driving a maroon Ford Explorer that had been reported stolen following a home invasion that occurred the previous day. Following her arrest, Alyssa confessed to participating in a home invasion on December 26, 2009 ("the December 26th incident") together with her sister, Angela Weant ("Angela"), appellant, and appellant's brothers, Cory Shedwick ("Cory") and Timmy Shedwick ("Timmy"). Based on this information, Angela was arrested in Morrow County and interviewed by Columbus

police officers. Angela confessed to being involved in the December 26th incident and other home invasions, including one on December 5, 2009 ("the December 5th incident"). Angela confessed that Alyssa was involved in some of these home invasions and indicated that appellant, Cory, and Timmy also participated. Angela and Alyssa were each charged with multiple felony offenses relating to the home invasions. They each pled guilty to a single charge of aggravated burglary, and each received a recommended sentence of seven years' imprisonment. As a condition of the plea agreements, Angela and Alyssa were required to testify truthfully against any and all accomplices.

{¶ 3} As a result of the information provided by Angela and Alyssa, appellant was arrested and charged with 20 felony counts. The case ultimately proceeded to trial on four charges: aggravated burglary with a firearm specification and aggravated robbery with a firearm specification related to the December 5th incident, and aggravated burglary with a firearm specification and aggravated robbery with a firearm specification related to the December 26th incident. The jury found appellant guilty of all charges and specifications, and the trial court sentenced appellant to 16 years' imprisonment.

{¶ 4} Appellant appeals from the jury verdicts, assigning five errors for this court's review:[1]

> I. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN A CONVICTION[.]
>
> II. THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29[.]
>
> III. THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE APPELLANT WHEN THE CONVICTION WAS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE[.]
>
> [IV.] [THE] JURY VERDICT IS AGAINST THE MANIFEST

[1] In his initial brief on appeal, filed through counsel, appellant asserted three assignments of error. After the state filed its brief in response to appellant's assignments of error, appellant, acting pro se, sought leave to file a supplemental brief, asserting two additional assignments of error, which we refer to herein as his fourth and fifth assignments of error. We granted appellant's motion for leave to file a supplemental brief and permitted the state to file a brief in response to the additional assignments of error.

> WEIGHT OF THE EVIDENCE [BECAUSE] THE STATE DID NOT PROVE VENUE, [AND] THE JURY NEVER FOUND [APPELLANT] GUILTY OF VENUE[.]
>
> [V.] [THE] VERDICT FORMS AND RESULTING ENTRY WERE INSUFFICIENT UNDER R.C. 2945.75 TO SUPPORT APPELLANT'S CONVICTION[.]

{¶ 5} As an initial matter, we note that, in appellant's pro se reply brief in support of his two supplemental assignments of error, referred to herein as the fourth and fifth assignments of error, appellant sought to assert a sixth assignment of error claiming that he received ineffective assistance of counsel at trial. This was a new issue that had not been raised in appellant's initial merit brief, filed by counsel, or in his supplemental brief, filed by appellant acting pro se. In the reply brief, appellant admitted that the state would not have an opportunity to rebut this new assignment of error. The state moved to strike the sixth assignment of error because it was improperly raised for the first time in appellant's reply brief.

{¶ 6} Under App.R. 16(C), an appellant may file a brief "in reply to the brief of the appellee." "A reply brief affords an appellant an opportunity to respond to an appellee's brief, * * * and it is improper to use it to raise a new issue." *State v. Mitchell*, 10th Dist. No. 10AP-756, 2011-Ohio-3818, ¶ 47. *See also State ex. rel. Bryant v. Indus. Comm.*, 10th Dist. No. 07AP-731, 2008-Ohio-3292, ¶ 5 ("The purpose of a reply brief is to afford the appellant, or in this case, relator, with an opportunity to 'reply' to the arguments in appellee's/respondent's brief, not to raise a new argument for the first time."). For this reason, generally, we will not address an argument raised for the first time in a reply brief. *State v. Townsend*, 10th Dist. No. 10AP-983, 2011-Ohio-5056, ¶ 15.

{¶ 7} Accordingly, because appellant raised a new assignment of error for the first time in his reply brief, we grant the state's motion to strike the portion of the reply brief asserting a sixth assignment of error.

{¶ 8} Appellant's first assignment of error asserts that the evidence was insufficient to sustain guilty verdicts on the charges of aggravated burglary and aggravated robbery. His second assignment of error contends that the trial court erred in denying his motion under Crim.R. 29 for acquittal on those charges. "Because a Crim.R.

29 motion questions the sufficiency of the evidence, '[w]e apply the same standard of review to Crim.R. 29 motions as we use in reviewing the sufficiency of the evidence.' " *State v. Walburg*, 10th Dist. No. 10AP-1087, 2011-Ohio-4762, ¶ 11, quoting *State v. Hernandez*, 10th Dist. No. 09AP-125, 2009-Ohio-5128, ¶ 6. Accordingly, we will consider appellant's first and second assignments of error together.

{¶ 9} "Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict." *State v. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶ 36, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In reviewing a challenge to the sufficiency of the evidence, an appellate court must determine "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." *State v. Jenks*, 61 Ohio St.3d 259, paragraph two of the syllabus (1991), superseded by constitutional amendment on other grounds as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102 (1997).

{¶ 10} Appellant was charged with aggravated burglary and aggravated robbery for the December 5th incident and with aggravated burglary and aggravated robbery for the December 26th incident.

{¶ 11} R.C. 2911.11(A) defines aggravated burglary and provides as follows:

> No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply:
>
> (1) The offender inflicts, or attempts or threatens to inflict physical harm on another;
>
> (2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

{¶ 12} For purposes of aggravated burglary, "trespass" is defined as a violation of the statute defining criminal trespassing. R.C. 2911.10. That statute, in relevant part, provides that "[n]o person, without the privilege to do so, shall * * * knowingly enter or

remain on the land or premises of another." R.C. 2911.21(A)(1).

{¶ 13} R.C. 2911.01(A) defines aggravated robbery and provides as follows:

> No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:
>
> (1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possess it, or use it;
>
> (2) Have a dangerous ordnance on or about the offender's person or under the offender's control;
>
> (3) Inflict, or attempt to inflict, serious physical harm on another.

{¶ 14} The trial court instructed the jury that "theft" within the context of aggravated robbery was defined as purposely depriving the owner of property by knowingly obtaining or exerting control of the property without consent of the owner, by threat, or by intimidation. The jury was also instructed that a firearm was a type of deadly weapon.

{¶ 15} Appellant was also charged with firearm specifications for each count. Under R.C. 2941.145(A), an additional prison term may be imposed if an indictment specifies that "the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense."

{¶ 16} We will consider the sufficiency of the evidence with respect to each of the incidents in turn, beginning with the December 5th incident. One of the victims, Rodolfo Vazquez-Mendoza ("Vazquez-Mendoza"), testified that, in the early morning of December 5, 2009, he was asleep in a bedroom of the apartment he shared with five other men. He awoke to someone pulling the bedcovers off his body. Vazquez-Mendoza testified that three African-American men and two white women had broken into the apartment. One of the intruders pointed a gun at Vazquez-Mendoza and placed him facedown on the floor. The women spoke Spanish, asking Vazquez-Mendoza and the

others in the apartment where their money was located. Vazquez-Mendoza testified that the intruders went through his belongings and stole pesos from him and from the other man who slept in that bedroom. He further testified that his uncle, who also lived in the apartment, grabbed a bat or stick and started waiving it at the intruders. One of the intruders took the bat or stick away and started beating Vazquez-Mendoza's uncle, rendering him unconscious. After the intruders left, Vazquez-Mendoza called the police. Columbus Police Officer Eric Westbrook ("Officer Westbrook") testified that, on December 5, 2009, he responded to a home invasion call at 5765 Milbank Road in Franklin County, Ohio. He stated that one or two of the victims may have been pistol-whipped and that one of them was bleeding. Officer Westbrook testified that cash and possibly a set of keys were taken from the apartment.

{¶ 17} Angela testified that, on December 5, 2009, she, a woman named Tasha, appellant, and Cory broke into an apartment on Milbank Road. She stated that they discussed how they would conduct the robbery while sitting in appellant's car prior to the incident. Angela explained that she and Tasha knocked on the door of the apartment; when the residents opened the door, the women entered, and then appellant and Cory forced their way into the apartment. Angela testified that appellant had a silver handgun during the December 5th incident and identified the gun at trial. She further testified that one of the residents of the apartment came out of a bedroom swinging a stick or bat. She stated that appellant struck the man in the head with the handgun, injuring the man's head. Angela testified that she and the others took wallets, change, a bag, and a boom box from the December 5th incident. Alyssa testified that she was not involved in the December 5th incident.

{¶ 18} As explained above, in examining a challenge to the sufficiency of the evidence, we must consider the evidence in the light most favorable to the prosecution and determine whether a rational jury could have found the essential elements of the crime proven beyond a reasonable doubt. *Jenks* at paragraph two of the syllabus. Angela's testimony, if believed, would establish that appellant forced his way into the apartment while the occupants of the apartment were present with the intention of taking the occupants' property without their consent. Her testimony would also establish that appellant had a firearm with him and that he struck and injured one of the occupants of

the apartment. Angela further testified that she, appellant, and the others took some of the occupants' property without their consent. Although Vazquez-Mendoza could not identify appellant as one of the intruders, his testimony, if believed, would also establish that one of the intruders had a gun, that one of the occupants of the apartment was injured, and that property was taken from the apartment without the owners' consent.

{¶ 19} Viewed in the light most favorable to the prosecution, this testimony would establish that appellant entered the victims' apartment by force, that the apartment was occupied at the time, that he entered with the purpose of committing the crime of theft, and that appellant inflicted physical harm on another person and had a deadly weapon on his person while in the apartment. Thus, a rational jury could find that the elements of aggravated burglary were proved beyond a reasonable doubt. Likewise, the jury could find that the elements of aggravated robbery were proved beyond a reasonable doubt because the testimony demonstrated that, while committing the offense of theft, appellant had a deadly weapon on his person, displayed or brandished the weapon, and inflicted serious physical harm on one of the victims. The testimony would also be sufficient to find appellant guilty of the firearm specifications associated with each charge.

{¶ 20} With respect to the December 26th incident, one of the victims, Geronimo Encarnacion ("Encarnacion"), testified that, early in the morning of December 26, 2009, he awoke and heard someone trying to get into his room in the apartment he shared with four other men. An intruder wearing a ski mask shoved his way into Encarnacion's room. He saw other intruders wearing ski masks try to enter other bedrooms in the apartment. The intruder who entered his room pulled out a firearm and told Encarnacion to get on the ground. The man started going through Encarnacion's belongings; a woman then entered his bedroom and asked him, in Spanish, where his money was located. Encarnacion testified that he gave the intruders his wallet. While going through Encarnacion's possessions, the intruder continued to point the gun at him. Encarnacion testified that his uncle, who was in the same bedroom, did not understand the intruders' command to get on the ground; when he refused to get on the floor, the man with the gun struck Encarnacion's uncle in the head with the butt of the firearm. Encarnacion testified that this caused his uncle's head to bleed. The intruders left, taking two sets of car keys in addition to other items. After the intruders left, Encarnacion called the police. The

Columbus police officer who responded to that call, Matthew Ewing ("Officer Ewing"), testified that the intruders entered the apartment through a sliding glass door. The victims were made to lie facedown on the floor and were robbed of money, identification, cell phones, car keys, and other items. The victims reported that one of the intruders pointed a handgun at them. Officer Ewing also testified that one of the victims was injured.

{¶ 21} Angela testified that on December 25, 2009, she, Alyssa, and two friends were in Columbus using drugs. When they ran out of drugs and money late in the evening of the 25th, Angela and the others tried to sell a stolen car, tried to break into cars to obtain electronics they could sell, and tried to find someone with whom Angela could prostitute herself. Angela then knocked on the back door of an apartment on Milbank Road and indicated that she wanted to prostitute herself to the residents who could be seen sleeping inside. The residents did not let Angela into the apartment. Angela then went to Alyssa and asked whether she was interested in robbing that apartment. After Alyssa agreed, Angela called appellant and told him she had a target for a robbery. Shortly thereafter, appellant arrived with his brothers Cory and Timmy. Angela and appellant discussed how they were going to conduct the robbery. Angela testified that appellant handed her a crowbar and a glove, and she used the crowbar to open the glass door of the apartment.

{¶ 22} Angela testified that she, Alyssa, appellant, Cory, and Timmy then entered the apartment. Angela testified that appellant had a gun during the break-in. Angela and appellant went into one of the bedrooms and took money and other items. Angela testified that the money included dollars and pesos. Cory and Timmy took a television and other items from the living room. When Angela and appellant went to move to another bedroom of the apartment, one of the residents pushed Angela. Angela testified that appellant then punched the man and knocked him to the ground. Angela testified that, in addition to the cash and other items, she and Alyssa each took a set of car keys from the apartment. After leaving the apartment, they divided the money that was taken. Angela testified that appellant took the pesos as part of his share. Alyssa located the car that matched the set of keys she had taken and took the car, a maroon Ford Explorer. Angela testified that she gave appellant the other set of keys and later picked up the car, a

dark blue SUV, from appellant. As noted above, Angela identified appellant's silver handgun at trial. Angela also identified a photograph of the pesos taken during the December 26th incident.

{¶ 23} Alyssa testified similarly regarding the December 26th incident. She testified that she, Angela, appellant, Cory, and Timmy entered the back door of the apartment after Angela opened the door with a crowbar. Alyssa further testified that appellant had a gun, but she did not remember what it looked like. She testified that she took a set of car keys during the robbery and stole the maroon Ford Explorer that matched the keys. This is the car she was driving when arrested on December 27, 2009.

{¶ 24} Columbus Police Officer Shea McCracken ("Officer McCracken") testified that, after Angela and Alyssa identified appellant, Cory, and Timmy, the police began to try to locate the brothers. On December 28, 2009, Officer McCracken and another officer waited near appellant's address. When appellant drove up, the officers pulled appellant over for a traffic violation. During the stop, Officer McCracken saw a silver firearm on the front seat of appellant's car. Appellant was arrested for the traffic violation and for a firearm violation. Officer McCracken testified that, when he searched appellant, he found pesos in appellant's pockets.

{¶ 25} With respect to the December 26th incident, viewing the testimony in the light most favorable to the prosecution, the testimony presented at trial would establish that, on December 26, 2009, he entered the victims' apartment by force, that the apartment was occupied at the time, that he entered with the purpose of committing the crime of theft, and that appellant inflicted physical harm on another person and had a deadly weapon on his person while in the apartment. Thus, a rational jury could find that the elements of aggravated burglary were proved beyond a reasonable doubt. Likewise, the jury could find that the elements of aggravated robbery were proved beyond a reasonable doubt because the testimony demonstrated that, while committing the offense of theft, appellant had a deadly weapon on his person, displayed or brandished the weapon, and inflicted serious physical harm on one of the victims. The testimony would also be sufficient to find appellant guilty of the firearm specifications associated with each charge.

{¶ 26} We find that the testimony and evidence presented at trial were sufficient to

permit the jury to find that all the essential elements of the charges were proven beyond a reasonable doubt. Accordingly, appellant's first and second assignments of error are without merit and are overruled.

{¶ 27} In appellant's third assignment of error, he asserts that the jury verdicts were against the manifest weight of the evidence.

{¶ 28} "While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief." *Cassell* at ¶ 38, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, citing *Thompkins* at 386. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). " 'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Thompkins*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). This discretionary authority " 'should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*

{¶ 29} Appellant's manifest-weight challenge focuses on the issue of identity. Specifically, appellant argues that Angela and Alyssa committed the robberies with the assistance of someone but that the manifest weight of the evidence did not prove that appellant was the individual who assisted in committing the crimes.

{¶ 30} Appellant argues that the only direct evidence linking him to the crimes is the testimony of Angela and Alyssa because none of the victims were able to positively identify appellant. Appellant attacks the credibility of Angela and Alyssa based on their admitted history of drug use. Appellant also argues that Angela and Alyssa were not credible witnesses because they were facing significant criminal penalties and received reduced sentences in exchange for testifying against appellant and his brothers. Appellant further suggests that Angela and Alyssa had animosity toward him based on the

events surrounding the death of Alyssa's former fiancée.

{¶ 31} Despite the lack of identification by any of the victims of the crimes, the jury still could have found appellant guilty based solely on the testimony of Angela and Alyssa. "A jury is not precluded from basing a criminal conviction on the uncorroborated testimony of an accomplice." *State v. Lowry*, 10th Dist. No. 03AP-415, 2004-Ohio-759, ¶ 19, citing *State v. O'Dell*, 45 Ohio St.3d 140, 145 (1989). With respect to the challenges to Angela and Alyssa's credibility based on their plea agreements or any personal animosity toward appellant, the jury was made aware of all this information through testimony and cross-examination. Both Angela and Alyssa denied any personal animosity against appellant. The jury was in the best position to weigh Angela and Alyssa's testimony and determine whether they were credible, and the jury was entitled to believe or disbelieve their testimony. *State v. Rankin*, 10th Dist. No. 10AP-1118, 2011-Ohio-5131, ¶ 30; *State v. Thompson*, 10th Dist. No. 07AP-491, 2008-Ohio-2017, ¶ 35.

{¶ 32} Appellant also argues that there was no physical evidence linking him to the crime scenes. However, a lack of physical evidence alone does render a conviction against the manifest weight of the evidence. *State v. Berry*, 10th Dist. No. 10AP-1187, 2011-Ohio-6452, ¶ 20. Further, we note that, although there was no evidence linking appellant to the crime scenes, Angela identified the gun and the pesos appellant had when he was arrested. When combined with the victims' testimony that one of the intruders carried a gun and that pesos were among the items stolen, this supports a conclusion that appellant participated in the robberies.

{¶ 33} Finally, we note that there were some inconsistencies in the testimony of the prosecution's witnesses, such as Vazquez-Mendoza's testimony that there were five intruders in the December 5th incident, versus Angela's testimony that four people participated in that robbery. Further, both appellant and the mother of one of his children testified regarding appellant's alibi for the time of the December 26th incident. However, a defendant "is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial." *Rankin* at ¶ 29. "Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the defendant's version." *Id.*

{¶ 34} After reviewing the testimony and evidence presented at trial, we conclude

that the jury did not clearly lose its way in finding appellant guilty of the charges against him. The jury verdicts were not against the manifest weight of the evidence. Accordingly, appellant's third assignment of error is without merit and is overruled.

{¶ 35} In his fourth assignment of error, appellant argues that the jury verdict is against the manifest weight of the evidence because the state did not prove venue beyond a reasonable doubt. Specifically, appellant asserts that the state failed to prove that the December 5th incident occurred in Franklin County.

{¶ 36} The Ohio Constitution provides that a criminal defendant is guaranteed "a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed." Ohio Constitution, Article I, Section 10. R.C. 2901.12(A) states that "[t]he trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed." Venue is not an essential element of a charged offense, but the state must prove it beyond a reasonable doubt, unless waived by the defendant. *State v. Wheat*, 10th Dist. No. 05AP-30, 2005-Ohio-6958, ¶ 10, citing *State v. Headley*, 6 Ohio St.3d 475, 477 (1983). "However, a defendant waives the right to challenge venue when the issue is raised for the first time on appeal." *State v. Martin*, 10th Dist. No. 02AP-33, 2002-Ohio-4769, ¶ 27.

{¶ 37} In this case, appellant's trial counsel made a Crim.R. 29 motion at the close of the state's case, arguing that a reasonable jury could not find appellant guilty based on the evidence the state presented. However, appellant did not make any objection in the Crim.R. 29 motion or at any other time during the trial regarding venue. Therefore, appellant waived the issue of venue. *See State v. Dumas*, 10th Dist. No. 98AP-581, 1999 WL 77196 (Feb. 18, 1999) (finding that the appellant's Crim.R. 29 motion was insufficient to challenge venue).

{¶ 38} In *Martin*, although we concluded that the appellant had waived the issue of venue by failing to raise it at trial, we found it appropriate to consider the argument under a plain-error analysis because the failure to prove venue affected a substantial right. *Martin* at ¶ 27. *See also State v. Buoni*, 10th Dist. No. 11AP-111, 2011-Ohio-6665, ¶ 11-15 (finding that appellant waived challenge to venue by failing to raise it at trial and by pleading guilty but also concluding that plain error did not exist); *Wheat* at ¶ 10-13

(analyzing proof of venue under plain-error standard where record was unclear as to whether appellant had challenged venue at trial). In accordance with the *Martin* precedent, we will consider appellant's claim under the plain-error standard despite the fact that appellant waived any objection to venue by failing to raise it at trial.

{¶ 39} Under Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." To find plain error, we must find that there was an error, that the error was plain, constituting an obvious defect in the trial proceedings, and that the error affected the appellant's substantial rights—i.e., that it affected the outcome of the trial. *State v. Carter*, 10th Dist. No. 03AP-778, 2005-Ohio-291, ¶ 22. Moreover, notice of plain error is taken only in exceptional circumstances to prevent a manifest miscarriage of justice. *State v. Sneed*, 63 Ohio St.3d 3, 10 (1992).

{¶ 40} Although venue may be established through direct evidence, " 'it is not essential that the venue of the crime be proved in express terms, provided it be established by all the facts and circumstances, beyond a reasonable doubt, that the crime was committed in the county and state as alleged.' " *Martin* at ¶ 29, quoting *State v. Roberts*, 10th Dist. No. 85AP-520, 1985 WL 10510 (Nov. 14, 1985), quoting *State v. Gribble*, 24 Ohio St.2d 85 (1970), paragraph two of the syllabus. In *Martin*, we found that there was sufficient circumstantial evidence of the location of the crime where the responding police officer testified that he was employed by the City of Columbus, assigned to the Franklinton area of the city, and was dispatched to a specific address on Sullivant Avenue to respond to the crime. Further, there was no evidence to suggest that the crime occurred outside Franklin County. *Id.* Similarly, in *State v. Damron*, 10th Dist. No. 08AP-110, 2008-Ohio-6081, we found that there was no direct evidence establishing venue; however, testimony from one witness that the crime occurred at a specified address in Columbus, Ohio, and testimony from another witness that a deputy sheriff responded to the scene was sufficient circumstantial evidence to establish that venue was proved. *Id.* at ¶ 7-8.

{¶ 41} As in *Martin* and *Damron*, in this case there was sufficient evidence to establish that the crimes were committed in Franklin County. With respect to the December 5th incident, Angela testified that it occurred at an address on Milbank Road.

Officer Westbrook also testified that he responded to a home invasion at 5765 Milbank Road in Franklin County, Ohio, on December 5, 2009. Officer Westbrook interviewed the victims and filed a report on the incident. With respect to the December 26th incident, Encarnacion testified that, in December 2009, he lived at an apartment at 5815 Milbank Road, and described the home invasion that occurred in the early morning of December 26. Angela also testified that the December 26th incident occurred at an address on Milbank Road. Officer Ewing testified that, on December 26 2009, he responded to a home invasion at 5815 Milbank Road in Franklin County, Ohio. Finally, there was no evidence presented at trial to suggest that the crimes occurred outside Franklin County. *See Martin* at ¶ 29.

{¶ 42} Although none of the victims testified directly that the crimes occurred in Franklin County, the testimony from Angela, who participated in the crimes, and from the responding police officers was sufficient to permit a reasonable jury to find that venue was proved beyond a reasonable doubt. As noted above, there was no contrary evidence presented at trial. We conclude that the jury did not clearly lose its way in finding that venue was established beyond a reasonable doubt and, therefore, the verdict was not against the manifest weight of the evidence with respect to venue.

{¶ 43} Appellant further appears to argue that the jury verdict forms were insufficient because they did not expressly state that the jury found that venue was established beyond a reasonable doubt. Appellant did not object to the verdict forms at trial; therefore, he waived all but plain error. *Carter* at ¶ 21.

{¶ 44} In this case, the jury verdict forms for the aggravated robbery and aggravated burglary charges contained language specifying that the jury found appellant guilty of each count as it was charged in the indictment. Each count of the indictment specified that the charged crime occurred in Franklin County. Moreover, the jury instructions directed the jurors that, in order to find appellant guilty of the charged crimes, they must find beyond a reasonable doubt that the crimes were committed in Franklin County. The language of the verdict forms, which were signed by all members of the jury, along with the language used in the indictment, establishes that the jury found that the crimes were committed in Franklin County. Thus, there was no error with respect to venue in the jury verdict forms.

{¶ 45} Accordingly, appellant's fourth assignment of error is without merit and is overruled.

{¶ 46} In appellant's fifth assignment of error, he initially argued that the jury verdict forms and judgment entry were insufficient under R.C. 2945.75 because the verdict forms lacked language indicating the degree of the offense or a statement that an aggravating element was found to justify convicting him of a greater degree of criminal offense. In relevant part, R.C. 2945.75 provides as follows:

> (A) When the presence of one or more additional elements makes an offense one of more serious degree:
>
> * * *
>
> (2) A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged.

{¶ 47} Appellant also cited *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, in support of this argument. The defendant in *Pelfrey* was charged with tampering with records, in violation of R.C. 2913.42, which would have been a misdemeanor offense. *Pelfrey* at ¶ 13. However, the records involved were government records, which elevated the crime to a third-degree felony under R.C. 2913.42(B)(4). *Id*. Neither the verdict form nor the verdict entry specified the degree of offense, nor did they mention that government records were involved. *Id*. Thus, pursuant to R.C. 2945.75(A)(2), the Supreme Court of Ohio concluded that Pelfrey could only be convicted of the least degree of the offense of tampering with records. *Id*. The court held that, "[p]ursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of criminal offense." *Id*. at syllabus.

{¶ 48} In this case, appellant was charged with aggravated burglary, in violation of R.C. 2911.11, and aggravated robbery, in violation of R.C. 2911.01. Under the applicable statutes, each of those crimes is a first-degree felony. *See* R.C. 2911.11(B) (defining

aggravated burglary as a first-degree felony); R.C. 2911.01(C) (defining aggravated robbery as a first-degree felony). Therefore, R.C. 2945.75 and *Pelfrey* do not apply here because this is not an instance where "the presence of one or more additional elements makes an offense one of more serious degree." R.C. 2945.75(A). *See also State v. Norman*, 4th Dist. No. 08CA3059, 2009-Ohio-5458, ¶ 62 (finding that *Pelfrey* does not apply to aggravated robbery); *State v. Brown*, 9th Dist. No. 25077, 2010-Ohio-4453, ¶ 16 (finding that *Pelfrey* does not apply to aggravated burglary).

{¶ 49} In his reply brief, appellant concedes that *Pelfrey* does not apply to the aggravated robbery and aggravated burglary charges against him, thus abandoning the initial argument in support of his fifth assignment of error. Appellant then asserts that he was improperly convicted of the firearm specifications on the aggravated robbery and aggravated burglary charges because the jury did not find that he displayed or brandished a firearm during the commission of the crimes.

{¶ 50} We reject this argument for two reasons. First, we reject this argument because appellant raises it for the first time in his reply brief. As explained above, a "reply brief merely affords an appellant 'an opportunity to reply to the brief of the appellee.' " *State v. Newcomb*, 10th Dist. No. 04AP-1223, 2005-Ohio-4570, ¶ 29, quoting *Sheppard v. Mack*, 68 Ohio App.2d 95, 97, fn. 1 (8th Dist.1980). Generally, we will not address an argument raised for the first time in a reply brief. *Townsend* at ¶ 15.

{¶ 51} Second, we reject this argument because appellant is incorrect on the merits. Under R.C. 2941.145(A), an indictment for a firearm specification must specify that the offender had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense. The verdicts entered by the jury below indicate that, with respect to each of the aggravated robbery and aggravated burglary charges, the jury found that appellant had a firearm on or about his person or under his control while committing the offense and that appellant used the firearm to facilitate the offense. These findings were sufficient to convict appellant of the firearm specifications.

{¶ 52} Accordingly, appellant's fifth assignment of error is without merit and is overruled.

{¶ 53} For the foregoing reasons, the state's motion to strike is granted, appellant's five assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Motion to strike granted; judgment affirmed.

BRYANT and CONNOR, JJ., concur.
