[Cite as *State v. Howard*, 2010-Ohio-2303.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-11-144
	:	O P I N I O N
- vs -		5/24/2010
	:	
JAMIE N. HOWARD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FRANKLIN MUNICIPAL COURT
Case No. 09-06-CRB-2430

Steven M. Runge, City of Franklin Prosecuting Attorney, P.O. Box 292, Franklin, Ohio 45005, for plaintiff-appellee

Jeffrey C. Meadows, Jonathan N. Fox, 8310 Princeton-Glendale Road, West Chester, Ohio 45069, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Jamie N. Howard, appeals her conviction and sentence in the Franklin Municipal Court for falsification. We affirm.

{¶2} On the evening of January 6, 2009, appellant's husband, Dexter Howard, was rushed to Atrium Medical Center ("Atrium") for injuries he sustained while riding his neighbor's four-wheeler. As appellant waited at the hospital, she gave a written statement describing the accident to Trooper Brandon Rhule of the Ohio State Highway

Patrol. Appellant told Trooper Rhule that "my husband and I were riding the [four]-wheeler * * * I attempted to turn right into the driveway. The [four]-wheeler flipped and when I got up I saw Dexter lying on the ground." When Trooper Rhule specifically asked whether appellant was operating the four-wheeler at the time of the accident, she answered "yes." Meanwhile, as Dexter lay in his hospital bed, he spoke to another officer named Sergeant Tom Bloomberg. Dexter indicated that at the time of the accident, he was seated on the back of the four-wheeler while appellant drove.

{¶3} The next day, Dexter contacted Sergeant Bloomberg to tell him that he was driving the four-wheeler at the time of the accident, and that appellant "had said what she had said because * * * she was trying to protect him." On January 9, 2009, Sergeant Bloomberg arrested Dexter at his residence. Dexter gave the officer a formal written statement, indicating that he was driving the four-wheeler at approximately 25-30 m.p.h. when he lost control as he attempted to turn the vehicle.

{¶4} As a result of the conflicting statements made to Trooper Rhule at Atrium, appellant was charged with one count of falsification, a first-degree misdemeanor, in violation of R.C. 2921.13(A)(3). On August 11, 2009, appellant's case was tried before the judge of the Franklin Municipal Court.

{¶5} At trial, the state presented the testimony of Officers Rhule and Bloomberg, then rested. At the conclusion of the state's case-in-chief, appellant moved for acquittal pursuant to Crim.R. 29. Appellant argued that the state failed to offer any evidence on the element of venue. Specifically, appellant argued the state failed to prove that the alleged false statements occurred within the court's venue. Upon the state's request, and over appellant's objection, the trial court allowed the state to reopen its case to present evidence that Atrium was located in Franklin Township, thus establishing proper venue in the Franklin Municipal Court.

{¶6} At the conclusion of trial, appellant was convicted of the falsification charge. The trial court later sentenced appellant accordingly. Appellant timely appeals, raising three assignments of error for review. This court will consolidate the first and second assignments of error to facilitate review.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED IN DENYING DEFENDANT/APPELLANT'S CRIM.R. 29 – MOTION FOR ACQUITTAL."

{¶9} Assignment of Error No. 2:

{¶10} "THE TRIAL COURT ERRED BY FINDING DEFENDANT/APPELLANT GUILTY OF FALSIFICATION WHEN THE STATE FAILED TO MEET THE ELEMENT OF VENUE."

{¶11} Appellant's first and second assignments of error are predicated on the trial court's failure to rule on her Crim.R. 29 motion at the time it was offered: after the close of the prosecution's case-in-chief, and before the case was reopened for additional prosecution evidence. Specifically, appellant argues that before resting, the state failed to produce evidence that the crime took place within the venue of the Franklin Municipal Court, and the trial court erred in allowing the state to reopen its case to present evidence thereof.

{¶12} It is well-established that the trial court, in maintaining reasonable control over the mode and presentation of evidence, has wide discretion to permit evidence to be offered out of order. *State v. Peterson* (June 28, 1999), Butler App. No. CA98-08-178, 2; *State v. Boggs* (Mar. 20, 1995), Clermont App. No. CA94-08-067, 1. This includes the decision to allow a party to reopen its case to present additional proof. *Peterson* at 2. Thus, a decision by the trial court to allow a party to reopen its case to offer additional evidence will be reversed only upon a showing of an abuse of discretion.

Id. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary or unconscionable in its ruling. *State v. Barnes*, 94 Ohio St.3d 21, 23, 2002-Ohio-68. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. See *State v. Nerren*, Wayne App. No. 05CA0052, 2006-Ohio-2855, ¶5.

{¶13} At trial, Trooper Rhule and Sergeant Bloomberg indicated that the sole basis for the charge against appellant was the written statement she gave at Atrium. However, the parties disputed whether Atrium was located within the limits of Franklin Township, or whether that area had been withdrawn from the township by the City of Middletown.[1] A review of the record reveals that prior to resting, the state failed to produce any evidence that Atrium remained in Franklin Township. At the close of the state's case-in-chief, appellant moved for acquittal pursuant to Crim.R. 29, claiming that the state failed to produce sufficient evidence of venue. However, the trial court did not immediately rule on appellant's motion because it was unclear whether Atrium was located in Franklin Township or the city of Middletown. The state asked for a short recess to obtain public records that would prove Atrium's location. The trial court asked appellant whether she had any objection to reopening the state's case, and appellant entered her objection. Nevertheless, the trial court permitted the state to reopen its case to prove that Atrium was located in Franklin Township. The state subsequently produced a tax duplicate printed from the Warren County Auditor's website, showing Atrium's location was in fact in Franklin Township. In its final decision and entry, the trial court indicated that "the printout from the Auditor's website is sufficient for the Court to take judicial notice that the Atrium Medical Center is located in Franklin Township,

1. The court acknowledged that the Franklin Municipal Court and the Middletown Municipal Court have concurrent jurisdiction over the portion of Franklin Township that is "in the City of Middletown but [sic] has not been withdrawn from the township." However, the Franklin Municipal Court lacks jurisdiction over

Warren County, Ohio."

{¶14} Ohio courts have held that a trial court does not abuse its discretion in allowing the state to reopen its case, even after a defendant's Crim.R. 29 motion for acquittal. See *Peterson*, Butler App. No. CA98-08-178 at 2; *State v. Crothers* (Dec. 26, 1989), Clinton App. No. CA89-06-007, 1; *Nerren*, 2006-Ohio-2855 at ¶4-14.

{¶15} In the present case, it cannot be said that the trial court erred in allowing the state to reopen its case to present evidence regarding Atrium's location for purposes of proving venue. Allowing the state to reopen its case ensured: (1) that the case was properly before the court; and (2) that both parties were able to present evidence on all relevant issues before the court made its decision. In sum, the trial court's decision to allow the state to reopen its case served the interests of justice and was a sound exercise of the trial court's discretion. See *State v. Steele*, Butler App. No. CA2003-11-276, 2005-Ohio-943, ¶140.

{¶16} Thus, appellant's first and second assignments of error are overruled.

{¶17} Assignment of Error No. 3:

{¶18} "THE TRIAL COURT ERRED BY PERMITTING THE STATE TO PRESENT EVIDENCE WITHOUT A WITNESS."

{¶19} In her third and final assignment of error, appellant argues that the trial court wrongfully took judicial notice that Atrium was located in Franklin Township because its decision was based on hearsay. Appellant argues that in order for the state's internet printouts to be admissible, Evid.R. 901(A)-(B)(1) required a witness to testify that the printouts were what they were purported to be.

{¶20} As an initial matter, Evid. R. 201 governs judicial notice of "adjudicative facts," i.e. facts of the case. See, also, *State v. Lahmann*, Butler App. No. CA2006-03-

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those portions of Franklin Township that have been annexed by the city of Middletown.

058, 2007-Ohio-1795, ¶27. A court may take judicial notice of a fact not subject to reasonable dispute that is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Evid.R. 201(B)(2). A court may take judicial notice, whether requested or not. Evid.R. 201(C). Further, "[j]udicial notice may be taken at any stage of the proceeding." Evid.R. 201(F). Once judicial notice of a fact is taken, a "party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." Evid.R. 201(E).

{¶21} During trial, appellant did not assert that the internet printouts generated by the state were inaccurate or unreliable. The only basis appellant provided for her objection was that the printouts constituted inadmissible hearsay because they were "not self-authenticating" – a fact irrelevant to the issue now before us.

{¶22} Upon review, we hold that the trial court took proper judicial notice that Atrium was located in Franklin Township. This fact is not subject to reasonable dispute because it is capable of accurate and ready determination by reference to the Warren County Auditor's website, a source whose accuracy cannot be questioned given its status as an official source of government information. See, e.g., *State v. Cook*, Wood App. No. WD-04-029, 2006-Ohio-6062. As a result, the location of Atrium is subject to judicial notice under Evid.R. 201(B)(2).

{¶23} In addition, the record is void of any request by appellant for an opportunity to be heard as to the propriety of the trial court's action pursuant to Evid.R. 201(E). Consequently, appellant waived or forfeited any challenge to the judicially-noticed facts.

{¶24} Thus, appellant's third assignment of error is overruled.

{¶25} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.