

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-09-064
	:	
- vs -	:	<u>OPINION</u>
	:	6/1/2015
	:	
NATHANAEL A. MILTON,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT
Case No. 2014 CRB 02014

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 302 East Main Street, Batavia, Ohio 45103, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Nathanael Milton, appeals his convictions in the Clermont County Municipal Court for failing to game check a deer and for taking more than one antlered deer per license year.

{¶ 2} Ohio Division of Wildlife Investigator Joel Buddelmeyer received an anonymous tip on the department's poacher hotline that Milton was killing too many deer and checking

them using the names of his father and brother. Investigator Buddelmeyer began an investigation, including reviewing documents where individuals from the Milton family had checked deer. When the documents did not "add up," Investigator Buddelmeyer decided to interview Milton and his family.

{¶ 3} Investigator Buddelmeyer went to Milton's home, which is located in Brown County adjacent to the Clermont County line, to familiarize himself with the area. When Investigator Buddelmeyer approached Milton's residence, he observed two deer heads hanging under Milton's carport. While Investigator Buddelmeyer was observing the deer heads, Milton pulled into the driveway of his home, and the two men spoke. Investigator Buddelmeyer informed Milton that he was going to procure a search warrant, and that the two deer heads were evidence. Milton admitted that he had shot a deer on his neighbor's property in Clermont County, and that he had not checked the deer. Milton told Investigator Buddelmeyer that he did not check the deer because he gave the deer to the neighbor who owned the property where the deer was shot.

{¶ 4} Investigator Buddelmeyer executed the search warrant the next day and found parts to three deer on Milton's premises. Investigator Buddelmeyer was also able to locate Milton's neighbor, Jim Steigleiter, to whom Milton gave the deer he shot in Clermont County. Steigleiter admitted to Investigator Buddelmeyer that he had checked the deer even though Milton had killed it. Steigleiter was charged with and convicted of providing false information to law enforcement. Milton was charged with failing to game check a deer in Case No. 2014 CRB 2014-A and for taking more than one antlered deer per license year in Case No. 2014 CRB 2014-B.

{¶ 5} Milton pled not guilty to the charges, and the matter proceeded to a bench trial before the municipal court. Milton testified that two of the deer heads that had been seized were shot by his brother, and that his brother had asked Milton to butcher the deer for its

meat. Milton testified that his brother did not want the heads, and therefore, Milton kept the heads for their antlers. Milton explained that the deer heads/skulls seized were in various stages of decay because not all had been shot within the license year. Milton, however, admitted to killing the deer in Clermont County that he gave to Steigleiter, and to not checking that deer.

{¶ 6} The municipal court found Milton guilty of both charges and sentenced him to three days in jail, a \$500 fine, \$2,000 in restitution to the state, three years of probation, forfeiture of the deer parts, and suspension of Milton's hunting privileges during his probation period. Milton now appeals his conviction in Case No. 2014 CRB 2014-B for killing more than one antlered deer in a license season, and the municipal court's restitution order in Case No. 2014 CRB 2014-A of \$2,000. Milton raises two assignments of error, which we will address together because they are interrelated.

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT BY FAILING TO GRANT DEFENDANT'S CRIMINAL RULE 29 MOTION FOR ACQUITTAL BECAUSE THE STATE FAILED TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT.

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE TRIAL COURT ERRED IN ENTERING A FINDING OF GUILTY BECAUSE SUCH VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 11} Milton argues in his assignments of error that his conviction for killing more than one antlered deer in a license season is not supported by sufficient evidence and was rendered against the manifest weight of the evidence. Milton also argues that the trial court's restitution order was invalid.

{¶ 12} Crim.R. 29(A) permits a trial court, upon motion, to enter a judgment of acquittal. *State v. Dougherty*, 12th Dist. Preble No. CA2013-12-014, 2014-Ohio-4760, ¶ 17. An appellate court reviews a trial court's decision on a motion for acquittal using the same standard as that used to review a claim challenging the sufficiency of evidence. *State v. Clements*, 12th Dist. Butler No. CA2009-11-277, 2010-Ohio-4801, ¶ 17.

{¶ 13} When reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, 12th Dist. Warren No. CA2006-01-007, 2007-Ohio-2298. "The relevant inquiry is 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 (1991), paragraph two of the syllabus, superseded on other grounds. A manifest weight challenge examines the inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other. *Wilson*, 2007-Ohio-2298.

{¶ 14} Milton was charged with a violation of Ohio Adm.Code 1501:31-15-11(F)(14), which prohibits harvesting an antlered deer and failing to check the deer. Milton was also charged with a violation of Ohio Adm.Code 1501:31-15-11(B)(2), which prohibits harvesting more than one antlered deer in a license year.

{¶ 15} The record clearly indicates, and Milton does not dispute, that he killed one deer in Clermont County without properly fulfilling the game check requirement. Despite giving the deer to Steigleiter, Milton still had the legal duty to game check the deer, and his failure to do so resulted in a violation of Ohio Adm.Code 1501:31-15-11(F)(14). As such, Milton's conviction in Case No. 2014 CRB 2014-A was supported by sufficient evidence and was not rendered against the manifest weight of the evidence.

{¶ 16} However, the municipal court's order of restitution of \$2,000 (\$500 for each

deer) as part of the sentence for the conviction in Case No. 2014 CRB 2014-A indicates that the court sentenced Milton as if he were guilty of failing to game check the Steigleiter deer *as well* as the three other deer heads found during execution of the search warrant. As such, and as conceded by the state, the restitution order is invalid.

{¶ 17} The state charged Milton for one count of failing to game check a deer so that Milton could not be sentenced to pay restitution on counts the state never brought in regard to the three other deer.¹ Therefore, the trial court's restitution order is hereby modified and reduced from \$2,000 to \$500 to account for the Steigleiter deer only.

{¶ 18} Moreover, and as also conceded by the state, Milton's conviction for killing more than one antlered deer in a license season, as charged in Case No. 2014 CRB 2014-B, was not supported by sufficient evidence. The record indicates that the state charged Milton with killing more than one antlered deer in one license season based upon the fact that Milton admitted to killing the Steigleiter deer, and three antlered deer heads were found on his property. However, the state did not present any evidence that Milton killed the three deer found on his property, or that all three deer were killed within a single license year.

{¶ 19} The evidence is clear that the deer heads were in various stages of decay. The photographs admitted by the state indicate that parts from three different deer were seized as a result of the search warrant: one pair of antlers, one deer head that was almost completely decomposed, and one deer head that showed minimal signs of decomposition. The state did not present any evidence, however, to establish in what year the three deer were killed or by

1. According to the record, it is possible that the municipal court was proceeding under the mistaken belief that Milton was charged with possessing deer without a tag in violation of Ohio Adm.Code 1501:31-15-11(F)(25), which requires accompaniment of a valid tag to all dead deer or deer parts. The record is clear that the deer parts found on Milton's property were not accompanied by valid tags. However, the state did not charge Milton as such because Clermont County would not have been the proper venue since Milton resides in Brown County and the untagged deer were found at his residence.

whom. As such, Milton's conviction in Case No. 2014 CRB 2014-B was not supported by sufficient evidence.

{¶ 20} As previously stated, the state concedes that Milton's conviction for killing more than one antlered deer in one season should be vacated. The state also concedes that the municipal court's restitution order of \$2,000 should be modified to \$500 to account for the fact that the state only charged Milton with one count of failure to check a deer. As such, Milton's assignments of error are hereby sustained to the extent the municipal court improperly ordered restitution and Milton's conviction for killing more than one antlered deer in a license year was not supported by sufficient evidence.

{¶ 21} Judgment affirmed as to Milton's conviction for failure to tag a deer in Case No. 2014 CRB 2014-A, but restitution is modified to \$500. In Case No. 2014 CRB 2014-B, Milton's conviction is reversed and he is hereby discharged.

S. POWELL and M. POWELL, JJ., concur.