

[Cite as *State v. Hoke*, 2003-Ohio-5733.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 19607
v.	:	T.C. NO. 02 CR 2006
TERRY HOKE	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	
	:	

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OPINION

Rendered on the 24th day of October, 2003.

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WOLFF, J.

{¶1} Terry Hoke was charged with carrying concealed weapons (a firearm), a violation of R.C. 2312.12(A). The indictment alleged that the offense was committed at premises for which a D liquor permit had been issued. This fact made the offense a

third degree felony rather than a fourth degree felony. R.C. 2923.12(D). Hoke entered a plea of no contest and was found guilty. He was sentenced to community control sanctions.

{¶2} The first five “branches” of Hoke’s “argument” implicate the constitutionality of R.C. 2312.12. We overrule these branches on the authority of *Klein v. Leis* (2003), 99 Ohio St.3d 537.

{¶3} The sixth branch states:

{¶4} “The Record is absent of proof of the necessary element under 2923.121 the [sic] Mr. Hoke was in a room that dispensed in a premises for which a D permit has been issued.”

{¶5} R.C. 2923.121(A) provides that “(n)o person shall possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued”

{¶6} Hoke appears to argue that the indictment was insufficient to charge a third degree felony because it didn’t allege that the offense occurred in a room where liquor was dispensed.

{¶7} R.C. 2923.12, pursuant to which Hoke was charged and convicted, elevates CCW from a fourth degree felony to a third degree felony if “the weapon involved is a firearm and the violation of this section is committed at premises for which a D permit has been issued. . . .” R.C. 2923.12(D).

{¶8} Putting aside the State’s argument that Hoke has raised this argument for the first time on appeal, we reject Hoke’s argument on the merits.

{¶9} Hoke was not charged with violating R.C. 2923.121, but with violating R.C.

2923.12. While R.C. 2923.121 confines criminal responsibility for possessing a firearm to doing so in a room in which liquor is being dispensed, R.C. 2923.12 prescribes criminal responsibility for possessing a concealed firearm — a more serious offense because of the concealment - to doing so anywhere upon the permit premises.

{¶10} The indictment included the necessary facts required by R.C. 2923.12(D) to elevate the offense from a fourth degree to a third degree felony.

{¶11} The sixth branch is overruled.

{¶12} The judgment will be affirmed.

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FAIN, P.J. and YOUNG, J., concur.

Copies mailed to:

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Hon. Michael T. Hall