

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23769
v.	:	T.C. NO. 2008 CV 03298
HASSAN F. ALTAHTAMONI	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 3rd day of December, 2010.

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McFARLAND, J. (by assignment)

{¶ 1} Defendant-Appellant, Hassan F. Altahtamoni, appeals the decision of the Montgomery County Court of Common Pleas convicting him of passing a bad check in violation of R.C. 2913.11(B). Altahtamoni claims there was error below in that the State failed to establish venue. He argues that the State did not demonstrate a significant nexus

between elements of his crime and Montgomery County, where his case was tried. Because we find there was such a nexus, we overrule Altahtamoni's assignment of error and affirm the decision of the court below.

I. Facts

{¶ 2} Altahtamoni was the owner of Tobacco Land, a business located in Marion, Ohio. In December 2007, Altahtamoni placed an order for cigarettes from Miami Cigar and Tobacco (“Miami Cigar”), a wholesaler of tobacco products. Miami Cigar is located in Montgomery County, Ohio. Miami Cigar delivered Altahtamoni's order to Tobacco Land and Altahtamoni paid Miami Cigar's delivery driver by check. The driver returned to Miami Cigar and turned the check over to the company's bookkeepers. The check was then deposited at Miami Cigar's bank, which is located in Montgomery County. The check was subsequently dishonored due to insufficient funds.

{¶ 3} Altahtamoni was indicted by the Montgomery County Grand Jury on one count of passing bad checks in violation of R.C. 2913.11(B). He waived his right to a jury trial and the matter was set for a bench trial. During trial, Altahtamoni stipulated to all elements of the offense except for venue. After the State rested, Altahtamoni moved for acquittal under Crim.R. 29, arguing that the state had failed to prove that Montgomery County was the proper venue for the proceedings. The trial court found that Montgomery County was a proper venue and that Altahtamoni was, thus, guilty. The court then sentenced him to a period of community control sanctions. Following sentencing, Altahtamoni timely filed the current appeal.

II. Assignment of Error

{¶ 4} “THE TRIAL COURT ERRED IN DENYING APPELLANT’S CRIMINAL RULE 29 MOTION FOR ACQUITTAL WHEN THERE WAS INSUFFICIENT EVIDENCE TO PROVE VENUE.”

III. Standard of Review

{¶ 5} We initially state the proper standard of review. The standard of review for a Crim.R. 29(A) motion is the same as a challenge to the sufficiency of the evidence. See, e.g., *State v. Peelman*, Hamilton App. No. C-090686, 2010-Ohio-4472, at ¶7; *State v. Johnson*, Wood App. No. WD-09-061, 2010-Ohio-3220 at ¶52; *State v. Brooker*, 170 Ohio App.3d 570, 2007-Ohio-588, at ¶8. “When reviewing the sufficiency of evidence, the relevant inquiry is whether any rational finder of fact, viewing the evidence in a light most favorable to the state, could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Skatzes*, Montgomery App. No. 15848, 2003-Ohio-516, at ¶16. A challenge to the sufficiency of the evidence is a question of law and does not allow a reviewing court to weigh the evidence. Rather, issues of credibility and the weight of the evidence reserved for the trier of fact. *State v. Rhines*, Montgomery App. No. 23486, 2010-Ohio-3117, at ¶12.

IV. Assignment of Error

{¶ 6} Altahtamoni’s sole assignment of error is that the trial court erred in denying his Crim.R. 29 motion for acquittal. During trial, he stipulated that the State could prove each element of passing bad checks in violation of R.C. 2913.11(B), except for venue. Accordingly, the entire basis of Altahtamoni's argument is that Montgomery County was the improper venue in which to bring charges against him.

{¶ 7} The facts in this case are not in dispute. Altahtamoni handed the check to Miami Cigar 's driver upon delivery of the cigarettes. This transaction took place at Altahtamoni's store in Marion, Ohio. The driver then brought the check back to Miami Cigar, located in Montgomery County, and handed it to the company's bookkeepers. The check was then deposited with Miami Cigar's bank, also located in Montgomery County.

{¶ 8} According to Altahtamoni, the fact that he handed the driver the check in Marion County, not Montgomery County, establishes that Montgomery County was not the proper venue. As his counsel stated during trial, "The bottom line is where did he -- he's charged with commonly called passing bad checks, and he passed that check up in Marion County." For the following reasons, we reject Altahtamoni's argument.

{¶ 9} Our analysis requires an examination of R.C. 2913.11. Section (B) of that statute states: "No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument." Section (C) states: "For purposes of this section, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored if either of the following occurs: (1) The drawer had no account with the drawee at the time of issue or the stated date, whichever is later; (2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within thirty days after issue or the stated date, whichever is later, and the liability of the drawer, indorser, or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor."

{¶ 10} In denying Altahtamoni's motion for acquittal, the trial court recited the sections listed above. The court then determined that, according to the terms of the statute, an element of the offense is the dishonoring of the check. Here, the court found that the check was dishonored in Montgomery County, as that was where the check was deposited, and where the bank's notice of dishonor was received.

{¶ 11} Further, as the State notes in its brief, to "issue a check" under R.C. 2913.11(B) "means causing any form of debit from a demand deposit account." R.C. 2913.11(A)(2). Accordingly, the "issue a check" element of the statute was not completed when Altahtamoni simply gave the check to the delivery driver in Marion. Instead, the act of causing a debit from a demand deposit account took place in Montgomery County.

{¶ 12} Additionally, the Ohio Attorney General has issued an instructive opinion concerning venue and the passing of bad checks. In that opinion, 2001 Ohio Op. Atty. Gen. No. 2001-030, the Attorney General stated:

{¶ 13} "A reasonable interpretation of the bad check statute thus is that its elements include both writing or otherwise acquiring a check and delivering or causing the check to be delivered to another person, with purpose to defraud and knowing that the check will be dishonored. The check is not considered issued until delivery is complete and the check has been received. * * * Under this interpretation, the offense takes place both in the location in which a person writes a bad check and in the location in which a person receives the bad check, and prosecution may take place in either of those locations" *Id.* at *4. The opinion further stated that "the common understanding of delivery is that it is not complete until the item delivered reaches its intended destination." *Id.* at *3.

{¶ 14} In the case sub judice, Miami Cigar’s delivery driver was obviously not the intended destination of Altahtamoni's check. Following the rationale expressed in the Attorney General's opinion, the check was not delivered until it reached Miami Cigar’s bookkeepers at its place of business, located in Montgomery County. And because delivery was not completed until it reached that destination, the State could elect to prosecute in that venue.

{¶ 15} “Venue is satisfied where there is a sufficient nexus between the defendant and the county of the trial.” *State v. Chintalapalli*, 88 Ohio St.3d 43, 45, 2000-Ohio-266. Here, we find that the State has presented sufficient evidence to show the existence of such a nexus between elements of Altahtamoni's offense and Montgomery County. Accordingly, we overrule his assignment of error and affirm the decision of the trial court.

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BROGAN, J. and GRADY, J., concur.

(Hon. Matthew W. McFarland, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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