

[Cite as *W. Carrollton v. Camel*, 2015-Ohio-2552.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

CITY OF WEST CARROLLTON

Plaintiff-Appellee

v.

ROXANNE M. CAMEL

Defendant-Appellant

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C.A. CASE NO. 26554

T.C. NO. 2014-CRB-1314

(Criminal appeal from
Miamisburg Municipal Court)

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OPINION

Rendered on the 26th day of June, 2015.

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DONOVAN, J.

{¶ 1} Defendant-appellant Roxanne Camel appeals her conviction and sentence for one count of criminal damaging, in violation of R.C. 2909.06, a misdemeanor of the second degree. Camel filed a timely notice of appeal with this Court on January 9, 2015.

{¶ 2} The incident which forms the basis for the instant appeal occurred on April

22, 2014, at the Indian Hills Apartment Complex located in West Carrollton, Ohio. At approximately 8:00 a.m., the victim, Kassandra Murphy, got into a verbal altercation with Wendy Foster and the appellant, Camel. After the dispute ended, Murphy went back into her apartment and observed Camel and Foster walk behind her motor vehicle, a 1999 black Ford Taurus. Murphy testified that her mother was the legal owner of the vehicle. Murphy's mother, however, was out of the country at the time of the incident and had left Murphy in possession of the vehicle.

{¶ 3} Murphy observed Camel pull a key from her pocket and scrape the rear bumper of the vehicle. The two women then left the scene. Upon investigation, Murphy observed two deep scratches on the right side of the rear bumper. Murphy called the police who arrived later that morning and photographed the damage to her vehicle.

{¶ 4} On July 15, 2014, a criminal complaint was filed against Camel charging her with criminal damaging. A trial was held on December 8, 2014. At the close of the State's case, Camel made a Crim.R. 29 motion for acquittal. Specifically, Camel argued that the State failed to prove lack of consent by the true owner of the vehicle, an essential element of criminal damaging. Because Murphy's mother did not testify regarding her lack of consent to the damage done to her vehicle, Camel asserted that she was entitled to an acquittal on the charged offense. The trial court overruled Camel's Crim.R. 29 motion, and the trial proceeded.

{¶ 5} On December 11, 2014, the trial court issued a judgment entry of conviction finding Camel guilty of criminal damaging. The trial court ordered Camel to pay a fine of \$80.00, as well as restitution to Murphy for the damage she caused to the vehicle. Camel was also sentenced to one year of non-reporting probation and ordered to serve

thirty days in jail, which was suspended contingent upon her payment of restitution to Murphy.

{¶ 6} It is from this judgment that Camel now appeals.

{¶ 7} Camel's sole assignment of error is as follows:

{¶ 8} "THE TRIAL COURT ERRONEOUSLY OVERRULED DEFENDANT-APPELLANT'S (CAMEL) CRIM. R. 29 MOTION FOR DIRECTED VERDICT [sic] WHERE NO EVIDENCE WAS PRESENTED BY PLAINTIFF-APPELLEE (STATE) TO PROVE AN ESSENTIAL ELEMENT OF CRIMINAL DAMAGING."

{¶ 9} In her sole assignment, Camel contends that the trial court erred when it overruled her Crim.R. 29 motion for acquittal because the evidence adduced at trial was insufficient to establish that she was guilty of criminal damaging. Specifically, Camel argues that the vehicle in question did not belong to the victim, Murphy, but was in fact owned by Murphy's mother and loaned to Murphy for her personal use. Camel, therefore, asserts that the State should have called the mother to testify regarding her lack of consent since she was the actual owner of the vehicle.

{¶ 10} Although the State does not raise the issue, we note that Camel did not renew her Crim. R. 29 motion for acquittal at the close of all the evidence in her trial. Here, Camel moved for acquittal at the close of the State's case-in-chief, the trial court denied the motion, and Camel then presented the testimony of three witnesses for the defense. Camel has therefore failed to preserve her insufficiency argument by not renewing it at the close of evidence. See *State v. Zimpfer*, 2d Dist. Montgomery No. 26062, 2014-Ohio-4401, ¶ 42 (appellant preserved his insufficiency argument by making an unsuccessful Crim. R. 29 motion for acquittal at the close of evidence at trial). It is

generally accepted in Ohio that if counsel fails to make *and* renew a Crim. R. 29 motion during a jury trial, the issue of sufficiency is waived on appeal. *State v. Cokes*, 2d Dist. Montgomery No. 26223, 2015-Ohio-619, ¶ 22. However, even if Camel had renewed her Crim. R. 29 motion, we conclude that her argument that her conviction for criminal damaging was based upon insufficient evidence lacks merit.

{¶ 11} “Reviewing the denial of a Crim. R. 29 motion *** requires an appellate court to use the same standard as is used to review a sufficiency of the evidence claim.” *State v. Witcher*, 6th Dist. Lucas No. L-06-1039, 2007-Ohio-3960. “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing 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.’ ” (Citations omitted). *State v. Crowley*, 2d Dist. Clark No. 2007 CA 99, 2008-Ohio-4636, ¶ 12.

{¶ 12} Camel was found guilty of criminal damaging, in violation of R.C. 2909.06, which provides in pertinent part:

(A) No person shall cause, or create a substantial risk of physical harm to any property of another without the other person’s consent:

- (1) Knowingly, by any means;
- (2) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

{¶ 13} At trial, Murphy provided the following testimony:

The State: This may sound obvious, but did you give consent to the defendant to key your car?

Murphy: No, never, that's not my car technically, it's my mother's car.

Q: When you say it's your mother's car, it was in your possession for what reason?

A: Because my mother went to Germany to take care of her mother, so she left me the vehicle so I could use it while she was gone.

Q: So it was in your possession and it was yours to use?

A: Yes.

Defense Attorney: I just want to clarify, you are not the registered owner of this vehicle?

Murphy: I am not the registered owner, it is in my possession, my mother is the registered owner of the car.

{¶ 14} It is well established that a right of possession is a sufficient property interest to protect an individual against criminal damaging. See *Dayton v. Wells*, 2d Dist. Montgomery No. 12862, 1992 WL 112941 (May 29, 1992); *State v. Maust*, 4 Ohio App.3d 187, 188-189, 447 N.E.2d 125 (5th Dist.1982). In the instant case, the undisputed testimony of Murphy established that she was in possession of the vehicle at the time of the incident. While Murphy's mother may have been the actual owner, the vehicle had been left for the personal use of Murphy. Thus, Murphy's mother's testimony was not necessary to establish the element of lack of consent. Contrary to Camel's argument, as the individual in possession of the vehicle at the time of the incident, Murphy's testimony that Camel did not have consent to damage the vehicle was sufficient to support her conviction for criminal damaging.

{¶ 15} Construing the evidence presented in a light most favorable to the State, as we must, we conclude that a rational trier of fact could find all of the essential elements of the crime of criminal damaging to have been proven beyond a reasonable doubt. Camel's criminal damaging conviction is therefore supported by legally sufficient evidence.

{¶ 16} Camel's sole assignment of error is overruled.

{¶ 17} Camel's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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HALL, J. and WELBAUM, J., concur.

Copies mailed to:

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