[Cite as *State v. Engle*, 2005-Ohio-276.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon: Julie A. Edwards, J.
	:	Hon: John F. Boggins, J.
-vs-	:	
	:	Case No. 03-CA-84
BRADLEY JASON ENGLE	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal From Fairfield County Court of Common Pleas Case 03CR125
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	January 21, 2005

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
GREGG MARX 201 South Broad Street 4th Floor Lancaster, OH 43130	JONATHAN T. TYACK 536 South High Street Columbus, OH 43215

Gwin, P.J.,

{¶1} Defendant-appellant Bradley Engle appeals his conviction and sentence from the Fairfield County Court of Common Pleas on one count of attempted murder and one count of attempted aggravated arson. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 25, 2003, the Fairfield County Grand Jury indicted appellant on one count of attempted murder (count one) in violation of R.C. 2903.02(A) and 2923.02, a felony of the first degree, one count of attempted aggravated arson (count two) in violation of R.C. 2909.02(A)(1) and 2923.02, a felony of the second degree, one count of aggravated arson (count three) in violation of R.C. 2909.02(A)(2), a felony of the second degree, and one count of arson (count four) in violation of R.C. 2909.03(A)(2), a felony of the fourth degree. At his arraignment on May 2, 2003, appellant entered a plea of not guilty to the charges.

{¶3} Pursuant to a Judgment Entry filed on July 25, 2003, the trial court granted appellant's motion to sever counts one and two of the indictment from counts three and four for purposes of trial.[1] Thereafter, a jury trial commenced on September 23, 2003. The following evidence was adduced at trial.

{¶4} At trial, Brian Woodside testified that appellant used to date Kendra Woodside, Woodside's ex-wife. On December 16, 2002, at approximately 10:30 p.m., Woodside drove his 1997 Jeep Cherokee home from work and parked the same in the parking lot of his apartment complex, which was located in Columbus, Ohio. The parking lot was open to the public. Woodside testified that when he started his Jeep up

[1] Counts three and four involved an alleged incident that occurred on or about November 18, 2002, involving a house in Pleasantville, Ohio, which is located in Licking County.

on the morning of December 17, 2002, "it was running incorrectly…it's a six cylinder - - like it wasn't firing on all six cylinders." Transcript at 314-315. When he backed the Jeep out of his apartment complex, Woodside noticed that the same was running very poorly, so he pulled over to the side of the road and turned the ignition off and then back on. The check engine light then came on.

{¶5} Woodside then drove approximately eight miles on the freeway to the Bridgestone/Firestone store where he worked, which is located in Pickerington in Fairfield County, Ohio. When he arrived at work, Woodside pulled his Jeep into one of the bays so that one of the diagnostic technicians could inspect the same. Upon examining the Jeep, Steve Lamb, a co-worker, discovered a suspicious device taped to the underside of the vehicle. According to Lamb, "it looked like a coffee can taped back by the rear of the vehicle with shotgun shells all duct taped around it." Transcript at 357. The police were then called and the store was evacuated.

{¶6} Gregory Haggit, a fire and bomb investigator with the Columbus Division of Fire, testified that the bomb was a one pound Folger's coffee can "with wick material laying in the bottom with the liquid and the shotgun shells [taped] surrounding it." Transcript at 409. A spark plug wire was connected to the coffee can. The "liquid" was gasoline. Harry Barber, a deputy state fire marshall, testified that "this particular device was designed to provide initiation or eventually a fire." Transcript at 514. Barber further testified that every eighth time the cylinder in the Jeep revolved an opportunity for a spark occurred. When asked whether the device taken from the Jeep was capable of causing a deflagration and explosion, Barber testified that "I don't know why it didn't." Transcript at 530. When asked to explain, Barber testified as follows:

{¶7} "Well, the can was located on top of the axle housing. The axle housing is in contact with the tires and in contact with the road and receives a lot of vibration. The lid on top of the container is not - - had not been reinforced in any way and the vibration - - at some point in time, there was that container lid coming off. Also, there were holes in the top of the lid. And remember, allowing the introduction of air into the vapor is necessary for ignition to occur.

{¶8} "The arch was there. The vapors were present, but the air ratio at this particular point in time, fortunately, did not reach a proper ratio while the engine was operating and running. But had this particular device - - had the lid jarred on it, the lid come loose as a result of pulling, from stretching or elongation of any of the components that it was attached to from vibration of driving, a little more air may have been introduced.

{¶9} "There were several opportunities that air could have been forced and introduced and all of them different. At rest, in motion, at various speeds may all have affected a ratio which the 1.4 to 7.4 mix ratio could have been attained." Transcript at 531.

{¶10} The execution of search warrants on appellant's residence in Pleasantville, Ohio, which is located in Licking County, and on Kendra Woodside's house in Buckeye Lake in Licking County yielded electrical tape, pliers, a Remington 20 gauge shotgun shell and an oil lamp without a wick in it. In addition, a gas can was found in appellant's garage. Evidence was introduced at trial matching the pair of pliers to crimp marks on the wires used to make the bomb. Testimony was also adduced that the shells used on the bomb were head-stamped using the same tool as the shotgun shell found in

Buckeye Lake in Licking County. Furthermore, appellant's fingerprints matched prints found on the duct tape surrounding the bomb.

{¶11} At the conclusion of the State's case, appellant made a Crim.R. 29 motion for judgment of acquittal, arguing that "there is absolutely no evidence of venue." Transcript at 734. The trial court overruled such motion, stating, in relevant part, as follows:

{¶12} "The Court is required, pursuant to Ohio Rule of Criminal Procedure 29, to consider this motion and to examine all of the evidence that has been admitted, and then determine whether reasonable minds could reach different conclusions as to whether all the material elements of the offenses charged were proven beyond a reasonable doubt. So I just want to make clear to you that the Court is not here to make a determination of whether the evidence has shown that you are guilty beyond a reasonable doubt. We're here for that purpose, to determine whether reasonable minds could reach different conclusions as to the evidence.

{¶13} "And more important to understand is the fact that the Court is required - - I have no discretion, I am required to view all of the evidence in the light most favorable to the State. Not favorable to you, but favorable to the State of Ohio. And that makes, obviously, a big difference in how the Court has to view the evidence. And that is to be contrasted with - - in the event that this matter does proceed to a jury, of course, the jury is required to grant you the benefit of the presumption of innocence and to proceed to determine whether or not the case has been proven beyond a reasonable doubt.

{¶14} "So in light of the standards by which the Court must judge this motion, I am going to overrule the Defense's motion for judgment of acquittal at this time. I feel

that it's appropriate for this matter to be - - to proceed to the balance of the trial. I do find that the State has proven, at least to the extent required pursuant to Criminal Rule 29, the elements that they are required to prove. Again, only to that minimal standard. And in viewing everything in the light most favorable to the State, the elements including the element of venue.

{¶15} "The Court was giving weight to - - in some regard to the testimony of the witness who indicated that this device could have exploded while it was in Fairfield County. It's also giving consideration to Ohio Revised Code 2901.12(B), (G) and (H), which I believe, in the Court's judgment, gives authority to finding venue for these allegations in Fairfield County, Ohio." Transcript at 741-742. Subsequently, the jury, on September 26, 2003, found appellant guilty of attempted murder and attempted aggravated arson.

{¶16} On October 8, 2003, appellant filed a Motion for Judgment of Acquittal pursuant to Crim.R. 29(C), once again arguing that the State failed to establish venue. As memorialized in a Judgment Entry filed on October 16, 2003, the trial court denied such motion and sentenced appellant to an aggregate sentence of seven years in prison.

{¶17} Appellant now raises the following assignments of error on appeal:

{¶18} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO CRIMINAL RULE 29, AS APPELLANT'S CONVICTION WAS BASED UPON INSUFFICIENT EVIDENCE REGARDING THE ELEMENT OF VENUE.

{¶19} "APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I & II

{¶20} In his two assignments of error appellant maintains that insufficient evidence exists to establish venue in Fairfield County, Ohio. We will address appellant's arguments concerning the trial court's overruling of appellant's Crim. R. 29(A) motion and his arguments concerning the manifest weight of the evidence concerning venue together.

{¶21} Section 10 of Article I of the Ohio Constitution requires that: " * * * [i]n any trial, in any court, the party accused shall be allowed * * * a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed * * *. "Crim.R. 18(A) states that, "(t)he venue of a criminal case shall be as provided by law."

{¶22} "Venue is not a material element of any offense charged. The elements of the offense charged and the venue of the matter are separate and distinct. *State v. Loucks* (1971), 28 Ohio App.2d 77, 274 N.E.2d 773, and *Carbo v. United States* (C.A.9, 1963), 314 F.2d 718. Yet, in all criminal prosecutions, venue is a fact that must be proved at trial unless waived. State v. Nevius (1947), 147 Ohio St. 263, 71 N.E.2d 258." *State v. Draggo* (1981), 65 Ohio St.2d 88, 90,418 N.E.2d 1343, 1345.

{¶23} R.C. 2901.12 contains the statutory foundation for venue. The relevant provisions of this section read, in pertinent part, as follows:

{¶24} "(A) The trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed.

{¶25} "(B) When the offense or any element of the offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle, in transit, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in any jurisdiction through which the aircraft, motor vehicle, train, watercraft, or other vehicle passed.

" * * *

{¶26} "(D) When the offense is conspiracy, attempt, or complicity cognizable under division (A) (2) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of its elements occurred.

{¶27} "(E) When the offense is conspiracy or attempt cognizable under division (A)(3) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the offense that was the object of the conspiracy or attempt, or any element of that offense, was intended to or could have taken place. When the offense is complicity cognizable under division (A) (3) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the principal offender may be tried.

"* * *

{¶28} "(G) When it appears beyond a reasonable doubt that an offense or any element of an offense was committed in any of two or more jurisdictions, but it cannot reasonably be determined in which jurisdiction the offense or element was committed, the offender may be tried in any of those jurisdictions.

{¶29} "(H) When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in

any jurisdiction in which one of those offenses or any element of one of those offenses occurred* * *"

{¶30} R.C. 2901.11 contains the statutory foundation for jurisdiction. The relevant provisions of this section read, in pertinent part, as follows:

{¶31} "(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

"* * *

{¶32} "(2) While in this state, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this state and the other jurisdiction.

{¶33} "(3) While out of this state, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this state * * *"

{¶34} The "'locus delicti [of the charged offense] must be determined from the nature of the crime alleged and the location of the act or acts constituting it.' " *United States v. Cabrales* (1998), 524 U.S. 1, 6-7, 118 S.Ct. 1772 (quoting *United States v. Anderson*(1946), 328 U.S. 699, 703, 66 S.Ct. 1213,). In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts. See *United States v. Rodriguez*(1999), 526 U.S. 275, 279, 119 S.Ct. 1239, 1242-1243; *Cabrales,* supra, at 6-7, 118 S.Ct. 1772; *Travis v. United States*(1961), 364 U.S. 631, 635-637, 81 S.Ct. 358 ; *United States v. Cores*(1958), 356 U.S. 405, 408-409, 78 S.Ct. 875; *Anderson, supra,* at 703-706, 66 S.Ct. 1213. "Dissection of the relevant provisions, namely R.C. 2901.12(A) and (H) and, more specifically, (G), explicitly denotes that venue is proper if

'* * * (the) offense or any element' was committed in the court's jurisdiction." *State v. Draggo* (1981), 65 Ohio St.2d 88, 90-91, 418 N.E.2d 1343, 1345.

{¶35} Accordingly disposition of appellant's propositions of law are dependent upon the determination of whether "any element" of the crimes were committed within Fairfield County, thereby making that county a proper location for the trial. The foregoing must unquestionably be answered in the affirmative. *State v. Draggo*, supra.

{¶36} The elements of a crime are the constituent parts of an offense which must be proved by the prosecution to sustain a conviction. Elements necessary to constitute a crime must be gathered wholly from statute and not aliunde. *State v. Draggo,* supra citing *State v. Winters* (1965), 2 Ohio St.2d 325, 209 N.E.2d 131; *State v. Cimpritz* (1953), 158 Ohio St. 490, 110 N.E.2d 416.

{¶37} Appellant was charged with violations of R.C. 2923.02, attempted murder, and a violation of R.C 2909.02(A) (1), attempted aggravated arson.

{¶38} R.C. 2903.02 defines the crime of murder. Under R.C. 2903.02(A), "[n]o person shall purposely cause the death of another * * * " and, under R.C. 2903.02(B), "[n]o person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 [voluntary manslaughter] or 2903.04 [involuntary manslaughter] of the Revised Code." Pursuant to R.C. 2901.22(A), "[a] person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature."

{¶39} R.C. 2909.02 defines the crime of aggravated arson. Under R.C.2909.02(A)(1) “No person, by means of fire or explosion, shall knowingly do any of the following(1) Create a substantial risk of serious physical harm to any person other than the offender * * *” Pursuant to R.C. 2901.22(A) “[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

{¶40} R.C. 2923.02(A) provides a definition of attempt: "No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense."

{¶41} The Ohio Supreme Court has held that a criminal attempt occurs when the offender commits an act constituting a substantial step towards the commission of an offense. *State v. Woods* (1976), 48 Ohio St.2d 127, 357 N.E.2d 1059, paragraph one of the syllabus, overruled in part by *State v. Downs* (1977), 51 Ohio St.2d 47, 364 N.E.2d 1140. In defining substantial step, the *Woods* Court indicated that the act need not be the last proximate act prior to the commission of the offense. *Woods* at 131-32, 357 N.E.2d 1059. However, the act "must be strongly corroborative of the actor's criminal purpose." Id. at paragraph one of the syllabus. This is not necessarily a test for venue purposes. Rather this test “properly directs attention to overt acts of the defendant which convincingly demonstrate a firm purpose to commit a crime, while allowing police intervention, based upon observation of such incriminating conduct, in order to prevent the crime when the criminal intent becomes apparent.” *Woods*, supra at 132, 357

N.E.2d at 1063. In other words, a substantive crime would have been committed had it not been interrupted.

{¶42} In the case at bar the appellant's attachment of the explosive device to the automobile of the intended victim in Franklin County is sufficiently demonstrative of his purpose to commit the charged offenses. Accordingly, Franklin County would be a proper venue for trial of the appellant. However, in the case sub judice the "attempt" cannot be said to be a "point in time" crime. See, e.g. *United States v. Rodriguez*, supra 526 U.S. at 281 119 S.Ct. at 1243. The attempt does not end until: 1). a substantive crime is committed; 2). the crime is discovered and prevented from occurring; or 3). the participant or participants abandoned the attempt prior to completion. In the case at bar, the attempt to commit murder and the attempt to commit aggravated arson did not end until the device was discovered and removed from the automobile. Until that point the device was still capable of accomplishing its purpose. Accordingly, as the attempt in the case at bar was continuing in nature, Fairfield County is also an appropriate venue for appellant's case. *State v. Beuke* (1988), 38 Ohio St.3d 29, 526 N.E.2d 274, at paragraph one of the syllabus; *United States v. Rodriguez*, supra 526 U.S. at 281 119 S.Ct. at 1244.

{¶43} "The outer limits on how broadly Congress may define a continuing offense and thereby create multiple venues is unclear. In addition, although 'the venue requirement is principally a protection for the defendant,' *Cabrales,* 524 U.S. at 9, 118 S.Ct. 1772, other policy considerations are relevant to the proper venue in particular cases. To determine whether the application of a venue provision in a given prosecution comports with constitutional safeguards, a court should ask whether the

criminal acts in question bear 'substantial contacts' with any given venue. *United States v. Reed,* 773 F.2d 477, 481 (2d Cir.1985). The substantial contacts rule offers guidance on how to determine whether the location of venue is constitutional, especially in those cases where the defendant's acts did not take place within the district selected as the venue for trial. While it does not represent a formal constitutional test, *Reed* is helpful in determining whether a chosen venue is unfair or prejudicial to a defendant. This test takes into account four main factors: (1) the site of the crime, (2) its elements and nature, (3) the place where the effect of the criminal conduct occurs, and (4) suitability of the venue chosen for accurate factfinding. *See id.* at 481." *United State v. Saavedra* (2nd Cir., 2000), 233 F.3d 85, 92-93.

{¶44} In the case at bar, although the device was attached to the intended victim's automobile in Franklin County, the "elements and nature" of this crime create a nexus between Franklin County and Fairfield County as we have already discussed. The locus of the criminal conduct and where its effect occurs also bear a substantial relation to Fairfield County. The device was discovered in Fairfield County. A number of witnesses from Fairfield County testified at appellant's trial. Persons and property in Fairfield County were placed in harm's way as a result of appellant's actions. *Holbrook v. State* (Miss. App., Jan. 2004), 877 So.2d 525. Appellant has not argued any identifiable prejudice resulted in his being tried in Fairfield County. We note that Fairfield and Franklin are adjacent counties and that the City of Columbus is located partially within each county. We are not therefore faced with a situation in which an accused is forced to defend an action in a distant, inconvenient forum.

{¶45} In reviewing a record for sufficiency, "[t]he 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* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, 39 O.O.2d 366, 227 N.E.2d 212, paragraph one of the syllabus.

{¶46} In the case at bar, the jury could reasonably conclude that the “attempts” continued into Fairfield County and, as a result, venue in Fairfield County was proper. Accordingly, appellant’s first and second assignments of error are overruled.

{¶47} For the foregoing reasons, the judgment of the Fairfield County Court of Common Pleas is affirmed.

By: Gwin, P.J. and

Boggins, J., concur;

Edwards, J., dissents

_____

_____

_____

WSG:clw 0110 JUDGES

EDWARDS, J., DISSENTING

{¶48} I respectfully dissent from the majority's analysis and disposition of appellant's two assignments of error.

{¶49} At issue in the case sub judice is whether there was sufficient evidence to establish venue. R.C. 2901.12 defines under what circumstances a court has venue. The trial court, in the case sub judice, found that there was venue based upon R.C. 2901.12(B), (G), and (H). These sections provide, in relevant part, as follows:

{¶50} "(A) The trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed.

{¶51} "(B) When the offense or any element of the offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle, in transit, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in any jurisdiction through which the aircraft, motor vehicle, train, watercraft, or other vehicle passed….

{¶52} "(G) When it appears beyond a reasonable doubt that an offense or any element of an offense was committed in any of two or more jurisdictions, but it cannot reasonably be determined in which jurisdiction the offense or element was committed, the offender may be tried in any of those jurisdictions….

{¶53} "(H) When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those

offenses occurred. Without limitation on the evidence that may be used to establish the course of criminal conduct, any of the following is prima-facie evidence of a course of criminal conduct:…

{¶54} "(3) The offenses were committed as part of the same transaction or chain of events, or in furtherance of the same purpose or objective…

{¶55} "(6) The offenses were committed along the offender's line of travel in this state, regardless of the offender's point of origin or destination."

{¶56} In the case sub judice, appellant was convicted of attempted murder in violation of R.C. 2903.02(A) and 2923.02 and attempted aggravated arson in violation of R.C. 2909.02(A)(1) and 2923.02. R.C. 2903.02(A), regarding murder, provides that "no person shall purposely cause the death of another …. In turn, R.C. 2909.02 states, in relevant part, as follows: "" A) No person, by means of fire or explosion, shall knowingly do any of the following:

{¶57} "(1) Create a substantial risk of serious physical harm to any person other than the offender;…"

{¶58} Revised Code 2923.02(A), the attempt statute, provides that "[n]o person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense." (Emphasis added.)

{¶59} In *State v. Woods*, the Court held that an attempt occurs when a defendant does or fails to do an act which constitutes a substantial step towards completing a course of conduct planned to culminate in the crime. *State v. Woods* (1976), 48 Ohio St.2d 127, 357 N.E.2d 1059, paragraph one of syllabus, overruled

on other grounds by *State v. Downs* (1977), 51 Ohio St.2d 47, 364 N.E.2d 1140. "To constitute a substantial step, the conduct must be strongly corroborative of the actor's criminal purpose." Id. The State must show more than just intent or mere preparation to commit the crime. Id. at 131. "[T]he essential elements of a criminal attempt are the mems [sic] rea of purpose or knowledge and conduct directed toward the commission of the offense." Id. However, the conduct necessary for a criminal intent need not be the last proximate act prior to the consummation of the crime. Id.

{¶60} Thus, the issue becomes whether appellant took any substantial steps in Fairfield County in a course of conduct planned to culminate in the commission of the crime of murder or the crime of aggravated arson.

{¶61} Appellee, in its brief, argues that venue was proper in Fairfield County because there was testimony adduced at trial that the bomb placed in Woodside's vehicle could have detonated at any point along Woodside's path of travel from his apartment in Franklin County to his place of employment in Fairfield County. Appellee notes that there was expert testimony at trial that the bomb should have detonated and that it did not do so because the proper ratio mix was not attained. According to appellee"[t]he ongoing attempt as Mr. Woodside drove in Fairfield County constituted substantial steps toward the commission of a crime."

{¶62} I would find, however, that appellant's attempt was complete upon placement of the bomb. No further conduct was done by the appellant after that point in time. Based on the fact that the bomb was not present on the evening of December 16, 2002, at 10:30 p.m. when Woodside parked his Jeep, but was

discovered on the morning of December 17, 2002, it can only be concluded that appellant placed the bomb on Woodside's Jeep in Franklin County either after 10:30 p.m. on December 16, 2002, or on the morning of December 17, 2002. In short, with respect to R.C. 2901.12(G) there is no evidence that appellant committed any offense or any element of an offense in Fairfield County.

{¶63} With respect to R.C. 2901.12(B), I believe that there is no evidence that the crimes were committed in a vehicle, "in transit", and that it cannot reasonably be determined in which jurisdiction the offense was committed. While, as noted by appellant, the victim traveled in a vehicle from his home in Franklin County to his place of employment in Fairfield County, the victim's travels are irrelevant since he "was not the commissioner of the offense." There is no evidence that appellant himself traveled in Fairfield County. In addition, it can reasonably be determined in which jurisdiction or jurisdictions the offense was committed.

{¶64} Furthermore, R.C. 2901.12(H) is not applicable because, pursuant to such section, a defendant who, as part of a course of criminal conduct, commits offenses in different jurisdictions may be tried for all of the offenses "in any jurisdiction in which one of those offenses or any element of one of those offenses occurred." As is stated above, there was no evidence adduced at trial that any element of either offense occurred in Fairfield County. Thus, there is no evidence that appellant committed offenses in different jurisdictions as a course of conduct. Moreover, with respect to R.C. 2901.12(H)(6), we note that the offenses were not committed along the offender's line of travel. As is stated above, no evidence was adduced at trial that appellant, the offender, traveled in Fairfield County.

{¶65} Appellee seems to argue that the attempt continues as long as it is possible for the bomb to go off. There is a very good argument to be made that once appellant set the plan in motion that he should be criminally responsible as long as it is possible for the plan to come to fruition. A similar argument could be made if appellant had sent a letter bomb through the mail or had set the bomb to go off on a timer. However, a strict reading of the attempt statute causes me to conclude that venue is appropriate only in a county where the appellant actually engaged in conduct when that county is reasonably ascertainable.

{¶66} Furthermore, I find that a review of R.C. 2901.12(E) is instructive. Such section states, as follows: "When the offense is conspiracy or attempt cognizable under division (A)(3) of section 2901.11 of the Revised Code, the offender may be tried in any jurisdiction in which the offense that was the object of the conspiracy or attempt, or any element of that offense, was intended to or could have taken place. In turn, R.C. 2901.11(A)(3) states as follows: "(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:… (3) While out of this state, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this state." As evidenced by the above language, the legislature clearly knew how to address venue in situations where a defendant, while out of state, attempts to commit an offense in the State of Ohio. The legislature could have included a venue provision addressing a situation where a defendant, while in one county, engages in conduct that, if successful, would result in an offense in another county. The legislature, however, chose not to do so.

{¶67} Based on the foregoing, I would find that the trial court erred in overruling appellant's motion for judgment of acquittal pursuant to Crim. R. 29 since there was insufficient evidence regarding the element of venue. I would further find that appellant's conviction was against the manifest weight of the evidence since, as noted by appellant, "no credible or reliable evidence was presented to support the contention that any criminal conduct or any substantial step in the commission of a crime occurred in Fairfield County, Ohio."

[Cite as *State v. Engle*, 2005-Ohio-276.]

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
BRADLEY JASON ENGLE	:	
Defendant-Appellant	:	CASE NO. 03-CA-84

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Fairfield County Court of Common Pleas is affirmed. Costs assessed to appellant.

_____

_____

_____

JUDGES