[Cite as *State v. Price*, 2015-Ohio-1199.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. CASE NO. 14 MA 28
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
JOHN PRICE	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Mahoning County Court No. 3 Sebring, Ohio Mahoning County, Ohio Case No. 13 CRB 547 SEB

JUDGMENT: Conviction affirmed; sentence remanded.

APPEARANCES:

For Plaintiff-Appellee:

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Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
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For Defendant-Appellant:

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JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: March 26, 2015

[Cite as *State v. Price*, 2015-Ohio-1199.]
ROBB, J.

{¶1} Defendant-Appellant John R. Price ("Appellant") appeals the decision of Mahoning County Court No. 3 finding him guilty of hunting on the lands of another without permission. Appellant first contends that the record fails to show a proper waiver of counsel under Crim.R. 44(B) and (C) before he proceeded to trial pro se. In defense of the conviction rendered without counsel or a waiver of counsel, the state points out that Crim.R. 44(B) controls the nature of the punishment, not the validity of the conviction. The state further responds that the lack of a valid waiver of counsel is irrelevant because no sentence to confinement was imposed. However, a suspended sentence qualifies as the imposition of a sentence to confinement. Appellant's first argument thus has merit, requiring resentencing.

{¶2} Appellant's second argument is that the state failed to prove venue. As venue can be waived and no objection was entered, Appellant must rely on plain error. Venue need not be directly expressed. Circumstantial evidence can establish venue. We conclude that the trial court acted within its broad discretion to determine that venue was established in Mahoning County under the totality of the facts presented, and thus, there was no plain error.

{¶3} Accordingly, Appellant's conviction is upheld. However, his sentence is reversed and remanded for a resentencing hearing with instructions that a sentence of confinement may not be imposed, including a suspended sentence.

STATEMENT OF THE CASE

{¶4} Appellant was cited for hunting on the lands of another without first obtaining written permission in violation of R.C. 1533.17(A). A first offense is a third-degree misdemeanor. R.C. 1533.99(A). Appellant appeared for arraignment on December 26, 2013 and entered a not guilty plea. He appeared for a bench trial without counsel on January 9, 2014. The court instructed the defendant where to sit and advised that the prosecution would present its case, the defendant could cross-examine the witnesses, and he could then present evidence and testify if he wished. (Tr. 3). The trial immediately proceeded.

{¶5} The landowner testified that his relatives saw someone while they were hunting on his property, prompting him to explore his woods for evidence of hunters the next day. While doing so, he encountered Appellant's brother near the property line represented by a fence line. (Tr. 8). The brother advised the landowner that he had permission to hunt on the neighboring land. (Tr. 9).

{¶6} Some days later, the landowner noticed that his trail camera had captured photographs of Appellant on his land. He printed the photographs in order to post them at the property line. One of these photographs, dated October 13, 2013, was admitted as a state's exhibit. It depicted Appellant carrying a gun and wearing camouflage clothing and an orange jacket.

{¶7} On October 21, 2013, as the landowner was posting the photographs near the property line, he spotted Appellant on his property wearing camouflage and carrying a crossbow. Appellant informed him that he was pushing deer to his brother who was in the woods. There was a confrontation during which Appellant's brother appeared and tried to make amends with the landowner. (Tr. 9-10). That same day, the landowner reported the incident to a game warden with the Ohio Department of Natural Resources ("ODNR").

{¶8} The transcript indicates that the landowner testified he lived on approximately 39 acres at "5781 (inaudible) Road." (Tr. 4). A state's exhibit admitted into evidence contained a map of the landowner's property, which displayed the address of 5781 Weaver Rd and listed this landowner as the owner. It was generated from gis.mahoningcountyoh.gov/mahoningpublicviewer. The landowner testified that he knows the location of his property line from both the map and the fence line. (Tr. 5). He pointed out to the court where on the map his trail camera had been located with regard to his property line and which way it had been pointed. (Tr. 6-7). He noted that the fence line was not visible on the aerial map but demonstrated where the fence line runs. The landowner also pointed out the gas line running through his property and how it related to the fence line. (Tr. 6-7).

{¶9} The ODNR officer testified that the landowner showed him the gas line and where he had posted his photographs and the trail camera. He noted that the

landowner had removed the camera for fear it would be taken. (Tr. 13-14). The officer stated that he thereafter met with Appellant and his brother, and Appellant explained his version of his encounter with the landowner by the "gas cut." Some words in the officer's testimony were inaudible. (Tr. 14).

{¶10} Appellant testified that his brother had written permission from a friend to hunt on the neighboring thirteen acres. He explained that he waved to the camera because his brother said he talked to someone else hunting the property. (Tr. 17). The third time appellant hunted there, he encountered the landowner "on a fire trail" pounding stakes with a hammer as if putting up a roadblock. (Tr. 16). Appellant testified that the landowner pulled out his gun, ran at him, and screamed about poaching. (Tr. 16). He acknowledged that he responded in kind, with screaming and cursing. (Tr. 18).

{¶11} Appellant provided documents to the court, including an aerial photograph encompassing most of the landowner's lot printed from maps.google.com, a property line map from Mahoning County GIS with the landowner's lot outlined, and a zoomed-in version of this map from the same Mahoning County web address that generated the state's exhibit containing the aerial photograph of 5781 Weaver Rd. Appellant placed a dot on the property lying south of the landowner's lot, stating that it represented his location that day by latitude and longitude. (Tr. 17). Appellant testified that he was not on the landowner's property and claimed that the camera was not on the landowner's property either. (Tr. 16-18). He also stated, "And if I was on his property it was probably by 60, 75 feet at the very most, and it was crossing through." (Tr. 17).

{¶12} Appellant's brother testified that he had written permission from the landowner's neighbor to hunt on that neighbor's property. He failed to bring the document to court, but he noted that he showed it to the landowner the first time they spoke in the woods and to the officer when he was served with the ticket. (Tr. 19). He related that he was in his tree stand when he first met the landowner. After the landowner mentioned poachers, he approached the fence line (which was broken down to knee height) and showed him his written permission. (Tr. 20). Appellant's

brother disclosed that the neighbor who gave him written permission had warned him to stay away from the old fence because the landowner was "adamant" about his property. (Tr. 19, 21). He pointed out positions on the map and stated that he never went onto the landowner's property.

{¶13} The court announced that it would take the matter under advisement and issue a written decision. (Tr. 22). On January 23, 2014, the court issued a judgment entry finding the defendant guilty of hunting without permission under R.C. 1533.17 and sentencing Appellant to ten days in jail with ten days suspended and six months of non-reporting probation. He was also fined $100 plus court costs. Appellant filed notice of appeal on February 6, 2014. He raises two assignments of error.

LACK OF COUNSEL

{¶14} Appellant's first assignment of error provides:

"The trial court erred in proceeding to trial without a valid counsel waiver, given that Price had no attorney."

{¶15} Appellant states that before proceeding to trial with a pro se defendant, the trial court was required to inquire as to whether he understood the dangers inherent in self-representation. He states that the record fails to reflect that he knowingly, intelligently, and voluntarily waived his right to counsel as the trial court did not engage in any colloquy on the record regarding self-representation or even elicit a waiver of counsel. Appellant reviews this court's decision in *Downie* and alleges a violation of Crim.R. 44(B) and (C)

{¶16} The state cites our *Roepke* case, noting that Crim.R. 44 controls the type of penalty that can be imposed for a petty offense where the record does not show a knowing, intelligent, and voluntary waiver, but the rule does not mandate counsel or invalidate a conviction. *See State v. Roepke*, 7th Dist. No. 10MA38, 2011-Ohio-6369, ¶ 11-12. The state also cites that case as standing for the proposition that there is no requirement that a court discuss the dangers of self-representation for petty offenses. The actual ruling was that Crim.R. 44 did not require the court "to discuss possible defenses and mitigating circumstances when

warning Appellant of the dangers of self-representation" for a petty offense. *Id.* at ¶ 13. (We also note that *Roepke* involved a plea rather than a trial.)

{¶17} In response to Appellant's suggestion that the right to counsel applies where there is merely a *possibility* of imprisonment, the state points out that the right to counsel only attaches to a petty offense where the court *actually imposes incarceration* and does not attach merely because incarceration is statutorily-authorized for the offense, citing the United States Supreme Court's holding in *Argersinger*. The state does not set forth circumstances showing that Appellant knowingly, voluntarily, and intelligently waived counsel and does not argue against Appellant's conclusion that the trial record contains no indication of a waiver of counsel. Rather, the state suggests that Appellant had no right to counsel because an actual term of imprisonment was not imposed here (as the court imposed ten days in jail with ten days suspended and six months of probation). However, this position has been rejected by the United States Supreme Court in *Shelton*, where the Court ruled that such a suspended sentence is considered the actual imposition of a term of incarceration.

{¶18} Before delving into that case, we review its antecessor cases. It has been held by the United States Supreme Court that absent a knowing and intelligent waiver, a defendant cannot be imprisoned for any type of offense unless he was represented by counsel at trial or he made a knowing, intelligent, and voluntary waiver of his right to counsel. *Argersinger v. Hamlin*, 407 U.S. 25, 37, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). This way, every trial judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed unless the defendant is represented by an attorney or there is a proper waiver of counsel. *Id.* at 40.

{¶19} It was thereafter explained that the Constitution does not require a state to provide counsel just because imprisonment is an authorized penalty. *Scott v. Illinois*, 440 U.S. 367, 368-369, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979). Instead, there is a line of demarcation for the constitutional right to appointment of counsel (where there is no waiver) and that is where a term of imprisonment is the actual penalty

imposed. *Id.* at 373-374 (and thus a defendant need not be appointed counsel where he is fined but not sentenced to a term of imprisonment after conviction).

{¶20} Consequently, imprisonment can be imposed without counsel if there was a valid waiver. *Argersinger*, 407 U.S. at 37. In waiving counsel and seeking to represent oneself, the defendant must knowingly and intelligently forgo the benefit of an attorney. *See id. See also Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). In line with these holdings, Crim.R. 44(B) provides:

> Where a defendant charged with a petty offense is unable to obtain counsel, the court *may* assign counsel to represent him. *When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel*. (Emphasis added.)[1]

Notably, whether one is "unable to obtain counsel" does not depend on indigency. *See, e.g., State v. Tymcio*, 42 Ohio St.2d 39, 44, 325 N.E.2d 556 (1975).

{¶21} As to the waiver of counsel required before imposing a sentence of confinement on an unrepresented petty offender, Crim.R. 44(C) provides: "Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22." *See also* Crim.R. 22 ("In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded * * * "). Courts are to indulge in every reasonable presumption against waiver. *State v. Wellman*, 37 Ohio St.2d 162, 171, 309 N.E.2d 915 (1974).

{¶22} As the state points out, Crim.R. 44(B) controls the nature of the penalty that may be imposed, but does not require invalidation of the misdemeanor conviction as it is the sentence to confinement not the judgment that is fatally defective. *See, e.g., Roepke*, 7th Dist. No. 10MA38 at ¶ 11-12; *State v. Delong*, 2d

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[1] *Compare* Crim.R. 44(A): "Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel." See also Crim.R. 44(C) (waiver must also be in writing for a serious offense).

Dist. No. 2000CA102 (May 4, 2011) (refusing to vacate plea, reserving the remedy for the assignment of error dealing with sentencing, and remanding for resentencing). *See also State v. Whipple*, 9th Dist. No. 17997 (Apr. 30, 1997). Contrary to the state's position, however, a sentence to ten days in jail that is suspended subject to completion of community control is not akin to a sentence with no term of imprisonment. In other words, the requirements of Crim.R. 44(B) and (C) are not eliminated by a suspended jail sentence. *See Alabama v. Shelton*, 535 U.S. 654, 658-659, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002).

{¶23} In *Shelton*, the Alabama Supreme Court found a waiver of counsel ineffective, affirmed the defendant's conviction and fine, and invalidated the aspect of the sentence imposing thirty days of suspended jail time. The Court reasoned that the state is constitutionally barred from activating the conditional sentence and thus it is a nullity. The United States Supreme Court agreed with the finding that a suspended sentence constitutes a term of imprisonment within the meaning of *Argersinger* and *Scott* even though incarceration is not immediate or inevitable. *Shelton*, 535 U.S. at 658-659. A defendant who receives a suspended sentence to imprisonment had a constitutional right to counsel when his guilt was being decided (and thus that portion of the sentence cannot stand). *Id.* at 674.

{¶24} Accordingly, Appellant cannot be sentenced to the suspended sentence "unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel." *See* Crim.R. 44(B). In order for that waiver of the right to counsel to be effective, the record must show that the defendant's relinquishment of the right was voluntary, knowing, and intelligent. *State v. Wells*, 7th Dist. 09BE12, 2009-Ohio-6803, ¶ 23. In speaking of the defendant's waiver of counsel, it has been stated that the defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.' " *Faretta*, 422 U.S. at 835 (where trial court violated defendant's right to self-representation).

{¶25} The Ohio Supreme Court pointed out that the United States Supreme Court did not mandate a formula or script to be read when stating that a defendant should be made aware of the dangers in order to make a record. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144, ¶ 100. The information a defendant must possess to make a valid waiver depends upon the totality of the circumstances in each case, including the complexity of the charge, the defendant's sophistication, and the stage of the proceedings. *Id.* at 101. The *Johnson* Court noted that in *Faretta*, the trial court told the defendant that it was a mistake to proceed without counsel and advised him that he would have to play by the same ground rules. *Id.* at ¶ 103. In *Johnson*, the Court found a valid waiver where the defendant was warned that he would be subject to the same rules of procedure and evidence that would apply to any other person. *Id.* at ¶ 104 (also observing that he was present for four days of testimony before attempting to waive counsel).

{¶26} Compliance with Crim.R. 44(B)'s requirement that the defendant was "fully advised by the court" and "he knowingly, intelligently, and voluntarily waives assignment of counsel" is easier to meet when the defendant is advised of the dangers and disadvantages of self-representation. *See State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, ¶ 44-45. This district has emphasized the use of "should" in the above *Faretta* quote about informing a defendant of the dangers and disadvantages of self-representation to ensure the record shows he is aware of the right he is waiving. *Wells*, 7th Dist. No. 09BE12 at ¶ 24. We have stated that this specific advice on the dangers is aspirational and a defendant's understanding is case-specific based upon the record. *Id.* at ¶ 24-25 (a case involving a plea), citing *Faretta*, 422 U.S. 806 and *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶27-29 (also concerning advice before a plea). *See also State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 17-26 (7th Dist.) (noting that courts often find an invalid waiver where there is no discussion of the hazards inherent in self-representation but acknowledging that we view the totality of the circumstances in a particular case to ascertain whether the standard in rule has been met).

{¶27} In any event, the trial transcript not only lacks advice regarding the dangers inherent in self-representation, but it also contains no explanation of why Appellant appeared without counsel and no indication that a waiver of counsel was knowing, intelligent, and voluntary. In fact, as Appellant points out, the record has no discussion of the waiver of counsel at all. The state did not counter these points.

{¶28} "Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22." Crim.R. 44(C). Without the advice and waiver being recorded and made in open court as required by Crim.R. 44(C) and with no discussion of counsel or self-representation at all, it cannot be found that Appellant, "after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel" under Crim.R. 44(B). We cannot find compliance with this rule. Accordingly, this assignment of error is sustained.

{¶29} As stated above, the failure to comply with Crim.R. 44(B) is not fatal to the conviction as the rule merely controls the available punishment. *See, e.g., Roepke*, 7th Dist. No. 10MA38 at ¶ 11-12; *Delong*, 2d Dist. No. 2000CA102; *Whipple*, 9th Dist. No. 17997. *See also Shelton*, 535 U.S. 654 (affirming Alabama Supreme Court's decision to affirm conviction and other portions of the sentence but remanding for trial court to modify the sentence to eliminate suspended sentence). Thus, this issue does not affect appellant's conviction. Rather, his sentence is reversed and remanded for resentencing at a sentencing hearing with instructions that no sentence to confinement can be imposed, including a suspended sentence.

{¶30} On the matter of the sentencing, we add that a sentencing hearing was not held in this case as the court took the matter under advisement after trial and then issued a judgment entry finding appellant guilty and imposing sentence. Crim.R. 43(A)(1) provides that "the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules." *See also* Ohio Constitution, Section 10, Article I (accused shall be allowed to appear and defend in person). None of the exceptions apply here. *See* Crim.R. 43(A)(1)-(3), (B) (waiver in writing or on the record, certain video arrangements, disruptive

conduct, or voluntary absence after commencement of trial, which allows trial to proceed without defendant only up to verdict).

{¶31} The rule applies to the sentencing of all defendants, including misdemeanants. *State v. Welch,* 53 Ohio St.2d 47, 48, 372 N.E.2d 346 (1978) (where misdemeanant was sentenced only by judgment entry after a bench trial and was not present for pronouncement of guilt and sentence, Supreme Court reversed for resentencing). *See also Beachwood v. Hill,* 8th Dist. No. 93577, 2010-Ohio-3313, ¶ 31-33, fn.4 (reversing for resentencing where municipal court held bench trial, took matter under advisement, and later issued judgment entry containing conviction and sentence); *State v. Lloyd*, 4th Dist. No. 03CA20, 2004-Ohio-4719, ¶ 19-20 (reversing where the municipal court announced sentence and guilt in a judgment entry outside of the defendant's presence after a bench trial).

{¶32} Moreover, Crim.R. 32(A)(1) provides that at the time of imposing sentence, the court shall "address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment." "A Crim.R. 32 inquiry is much more than an empty ritual: it represents a defendant's last opportunity to plead his case or express remorse." *State v. Green*, 90 Ohio St.3d 352, 359-360, 738 N.E.2d 1208 (2000). There is no exception to the defendant's right to allocution in misdemeanor cases. *State v. Wallace*, 7th Dist. No. 12MA180, 2013-Ohio-2871, ¶ 8; *Defiance v. Cannon*, 70 Ohio App.3d 821, 592 N.E.2d 884 (3d Dist.1990). This court recognizes the violation of Appellant's right to be present and to speak at sentencing, which will be remedied by the remand for a resentencing hearing.

VENUE

{¶33} Appellant's second assignment of error provides:

"The trial court erred in entering a judgment of conviction without sufficient proof of venue."

{¶34} Appellant states that there was insufficient evidence to establish venue in Mahoning County because, although specific testimony on the county is not required, there was no other evidence such as city or township, landmarks, or

responding police department. *Citing State v. Shuttlesworth*, 104 Ohio App.3d 282, 286, 551 N.E.2d 871 (7th Dist.1995) (sufficient evidence where testimony showed offense took place on a named street near certain business and the officer was on duty for Cadiz). Appellant also notes that the landowner's reference to his road was said to be inaudible.

{¶35} Venue lies "in the county in which the offense is alleged to have been committed * * *." Section 10, Article I of the Ohio Constitution. *See also* R.C. 2901.12(A). In reviewing the record for sufficiency of the evidence to prove venue, we have instructed that the evidence should be viewed in the light most favorable to the prosecution. *State v. Brown*, 7th Dist. No. 03MA32, 2005-Ohio-2939, ¶ 79 (sufficient circumstantial evidence of venue where testimony showed incident occurred in trees that could be seen from defendant's house on Market Street and where Youngstown police went to the defendant's house to arrest him).

{¶36} Venue is a fact which must be proven beyond a reasonable doubt (unless it has been waived). *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, 23 N.E.3d 1023, ¶ 143; *State v. Headley*, 6 Ohio St.3d 475, 477, 453 N.E.2d 716 (1983). However, venue need not be established in express terms. *Jackson*, 141 Ohio St.3d 171 at ¶ 144; *Headley*, 6 Ohio St.3d at 477. *See also State v. Chintalapalli*, 88 Ohio St.3d 43, 45, 723 N.E.2d 111 (2000) (court must find a sufficient nexus between the defendant and the county of trial). Rather, it can be established by the totality of the facts and circumstances in the case. *Id.* "Trial courts have broad discretion to determine the facts that would establish venue." *Jackson*, 141 Ohio St.3d 171 at ¶ 144.

{¶37} Although we speak in terms of whether the evidence was sufficient to establish venue (and sufficiency of the evidence on the material elements is not subject to waiver at trial), *venue is not a material element of the case and the issue of venue can be waived*. *Id.* at ¶ 143. If a specific objection to venue is not made, then the appellate court reviews only for plain error. *Id.* at ¶ 142-143. *See also State v. Lamb*, 7th Dist. No. 12MA224, 2013-Ohio-5683, ¶ 17-18 (citing cases finding that general Crim.R. 29 motion did not preserve the venue issue where no specific

objection to venue was made). Pursuant to Crim.R. 52(B), an appellate court can use its discretion to recognize a plain or obvious error affecting substantial rights even though the error was not raised below where there are exceptional circumstances and recognition of the error will avoid a manifest miscarriage of justice. *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 62.

{¶38} There was no allegation below that venue was not established, and thus, absent plain error, the issue was waived for purposes of appeal. For the following reasons, we cannot find plain error in this case.

{¶39} The landowner testified that Appellant was hunting on his property. The transcript indicates that he has approximately thirty-nine acres at "5781 (inaudible) Road." (Tr. 4). Contrary to appellant's suggestion, the fact that the street name was said to be "inaudible" by a court reporter who was transcribing a *taped* trial does not plainly demonstrate that a street name was not provided or was not audible to the trial judge who heard the testimony live.

{¶40} In fact, the electronic copy of the proceedings from which a transcription is made is part of the record. *See* App.R. 9(B)(6)(i). From this recording, it can be ascertained that the landowner testified that his property was located at "5781 Weaver Road."

{¶41} Plus, the state's admitted exhibit, showing an aerial view of the landowner's lot (with highlighted property lines) and some neighboring properties, has the address "5781 WEAVER RD" in a caption bubble that points to the structure on the highlighted lot. The landowner identified this as his land, and his name is listed as the owner in another caption.

{¶42} Still, Appellant suggests that a street number and street name would be inadequate without indication of a city, township, landmark, or arresting officer's affiliation known to be located in the county. However, the state's exhibit identified by the landowner as depicting his property at 5781 Weaver Road has a header location of Mahoning County and was generated from the following website:

gis.mahoningcountyoh.gov/mahoningpublicviewer. No objections were lodged with the trial court as to these exhibits.[2]

{¶43} In sum, although the safest prosecutorial practice is to ensure that at least one witness testifies to the county (or even the city or township) when giving the street address at which the offense occurred, an explicit statement of venue is not mandatory. *See, e.g., Jackson*, 141 Ohio St.3d 171 at ¶ 144; *Chintalapalli*, 88 Ohio St.3d at 45. *Headley*, 6 Ohio St.3d at 477. Under the totality of the facts and circumstances existing in this particular case, this court concludes that it was within the trial court's "broad discretion" to find that the land on which Appellant was discovered hunting was located in Mahoning County. *See Jackson*, 141 Ohio St.3d 171 at ¶ 144. As there was no plain error, this assignment of error is overruled.

{¶44} For the foregoing reasons, appellant's conviction is affirmed, and the case is remanded for a resentencing hearing with instructions that a sentence to confinement cannot be imposed, which includes a suspended sentence.

Donofrio, P.J., Concurs.

DeGenaro, J., Concurs.

[2] It is also noted a defense exhibit showing property lines and the landowner's name was also generated from this same website, and another defense exhibit is labeled with "Mahoning County GIS." The latter exhibit has a legend explaining what descriptor indicates the county line. It shows that the landowner's property is not bisected by a county line, nor is there a county line in the neighborhood of the landowner's lot portrayed on the map. Thus, after the failing to raise venue, the defense helped to verify it.