[Cite as *State v. Altman*, 2015-Ohio-1898.]

COURT OF APPEALS
COLUMBIANA COUNTY, OHIO
SEVENTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
RUSTY RAY ALTMAN	:	Case No. 14 CO 33
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Columbiana County Municipal Court, Case No. 2014 CRB 609
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	May 15, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MEGAN L. FORSYTHE Assistant Prosecuting Attorney Columbiana County Prosecutor's Office 38832 Saltwell Road Lisbon, OH 44432	JOHN A. AMS 134 Westchester Drive Youngstown, OH 44515

Baldwin, J.

{¶1} Defendant-appellant Rusty Ray Altman appeals his conviction and sentence from the Columbiana County Municipal Court on one count of theft. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 5, 2014, a complaint was filed alleging that, on May 22, 2014, appellant had committed the offense of theft in violation of R.C. 2913.02(A)(1)(3), a misdemeanor of the first degree. At his arraignment, appellant entered a plea of not guilty to the charge.

{¶3} A jury trial was held on June 18, 2014. At the trial, Christine Helman testified that she resided at 43575 Cream Ridge Road in Lisbon, Ohio. She testified that she came home from work at approximately 7:45 a.m. on May 22, 2014 and went into her house, leaving her car unlocked. Helman testified that she heard appellant, who she had known for seven to ten years, knocking on her door. She initially ignored the knocking but, when she looked out, she saw appellant inside her car on the driver's side. When Helman went outside and asked appellant what he was doing, he told her that he was hunting for 50 cents to purchase a can of pop. Helman then ordered appellant out of her car.

{¶4} After appellant exited her vehicle, Helman asked him to empty his pockets. According to her, appellant denied that he had anything and refused to do so. Helman then walked into her house and shut the door in appellant's face. Helman told appellant that she was calling the Sheriff. After appellant left, Helman went outside and checked her car. According to her, her purse was ransacked and was "dumped all over the passenger side" and her wallet was open. Transcript at 13. Helman testified that between $125.00 and $130.00 was missing from her wallet, but she was unsure of the amount because she had gotten groceries in the morning and had paid with cash. She indicated that she knew that she had cash in her wallet and that the cash was gone. Helman then gave a written statement to the Deputies who arrived after being called. When asked, she stated that she never was able to locate the money.

{¶5} Deputy William McGee of the Columbiana County Sheriff's Office testified that, on May 22, 2014, he responded to a call on Cream Ridge Road. Deputy McGee testified that they had received a call from Helman at 8:20 a.m. When he spoke with Helman, she told him that appellant, who was her neighbor, had been in her unlocked car and had ransacked her purse. The Deputy testified that the location of Helman's purse and other items inside her car was consistent with her story. Deputy McGee testified that he went over to appellant's residence and that either no one was there or no one would answer the door. The Deputy testified that there were no cars in appellant's driveway, but that Helman had told him that a car had departed from appellant's residence after appellant's confrontation with her. Deputy McGee further testified that Helman indicated that $125.00 to $130.00 was missing from her wallet. The money was never located.

{¶6} At the close of appellee's case, appellant's counsel made a Crim.R. 29 motion for acquittal. The motion was denied.

{¶7} At the conclusion of the evidence and the end of deliberations, the jury, on June 18, 2014, found appellant guilty of theft. Appellant was sentenced to 180 days in jail.

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

{¶9} THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR ACQUITTAL WHERE THE STATE FAILED TO PROVE THE COUNTY OF VENUE BEYOND A REASONABLE DOUBT.

{¶10} APPELLANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

I

{¶11} Appellant, in his first assignment of error, argues that his Crim.R. 29 motion for acquittal should have been granted because appellee submitted insufficient evidence as to venue.

{¶12} A Crim. R. 29(A) motion for acquittal tests the sufficiency of the evidence presented at trial. State v. Williams, 74 Ohio St.3d 569, 576, 1996-Ohio-91, 660 N.E.2d 724. Crim.R. 29(A) allows a court to enter a judgment of acquittal when the state's evidence is insufficient to sustain a conviction.

However, “a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.” State v. Bridgeman, 55 Ohio St.2d 261, 381 N.E.2d 184 (1978), syllabus.

{¶13} The standard of review for a challenge to the sufficiency of the evidence is set forth in State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, “An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The 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.”

{¶14} It is axiomatic that in order for the jurisdiction of the trial court to attach, the state has the burden of establishing that the crime occurred within the trial court's jurisdiction. State v. Headley, 6 Ohio St.3d 475, 453 N.E.2d 716 (1983). The Headley court noted at 477 as follows:

> Although it is not a material element of the offense charged, venue is a fact which must be proved in criminal prosecutions unless it is waived by the defendant. State v. Draggo (1981), 65 Ohio St.2d 88, 90, 418 N.E.2d 1343 [19 O.O.3d 294]. The standard of proof is beyond a reasonable doubt, although venue need not be proved in express terms so long as it is established by all the facts and circumstances in the case. State v. Dickerson (1907), 77 Ohio St. 34, 82 N.E. 969, paragraph one of the syllabus.

{¶15} In the case sub judice, Deputy McGee, who is with the Columbiana County Sheriff's Department, testified that the crime occurred at 43575 Cream Ridge Road in Lisbon, Ohio. He further testified that the address was in Elkrun Township. Although there was no definitive statement as to venue in Columbiana County, we find there was sufficient direct evidence of the geographical location to establish venue under a Crim.R. 29 standard. Construing the evidence in a light most favorable to the state, there was testimony on the exact location of the incident to establish venue. See State v. Cochran, 7th Dist. Columbiana No. 88-C-13, 1990 WL 121871 in which the court held, in relevant part, on page 2 as follows:

> When a witness testifies of a particular location without giving the name of the county, judicial notice may be taken that location is located in a particular county. In 26 Ohio Jurisprudence 3d 431-432, Criminal Law, Section 685:
>
> The venue of a crime is sufficiently proved although there is no direct testimony that the offense charged occurred in the county of prosecution except as this appears to be so from the names of the streets where the parties lived and frequent allusions to incidents locating them in a city within the county. Venue may be established by proof that the accused was seen at a place in a particular county and that the crime was committed at that place in that county.

{¶16} Based on the foregoing, we find that the trial court did not err in denying appellant's Crim.R. 29 motion.

{¶17} Appellant's first assignment of error is, therefore, overruled.

II

{¶18} Appellant, in his second assignment of error, argues that his conviction for theft is against the manifest weight of the evidence. We disagree.

{¶19} Our standard of review on a manifest weight challenge to a criminal conviction is stated as follows: "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered ." State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. Id. This is because the credibility of the witnesses and the weight of the evidence are matters primarily left to the jury to assess. State v. DeHass, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

{¶20} Appellant, in the case sub judice, was convicted of theft in violation of R.C. 2913.02. Such section states, in relevant part, as follows: "(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:"(1) Without the consent of the owner or person authorized to give consent;….."

{¶21} Appellant specifically argues that appellee failed to prove that he took or exercised control over Helman's property. However, at trial, Helman testified that she found appellant in her unlocked car looking for money to buy a pop and that after he got out, her purse was ransacked. She testified she had between $125.00 and $130.00 in cash in her wallet and that the money was missing. We find that the jury, in convicting appellant, did not lose its way. The jury, as trier of fact, clearly found her testimony credible.

{¶22} Appellant's second assignment of error is, therefore, overruled.

{¶23} Accordingly, the judgment of the Columbiana County Municipal Court is affirmed.

Baldwin, J. concurs.

Gwin, P.J. concurs.

Wise, J. concurs