

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ADAM MICHAEL SOVEL,

Defendant-Appellant.

CASE NO. 2022-A-0116

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2022 CR 00227

OPINION

Decided: December 29, 2023

Judgment: Affirmed

Colleen M. O'Toole, Ashtabula County Prosecutor, and *Christine Davis*, Assistant Prosecutor, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Sean P. Martin, 113 North Chestnut Street, Suite A, Jefferson, OH 44047 (For Defendant-Appellant).

EUGENE A. LUCCI, J.

{¶1} Appellant, Adam Michael Sovel, appeals the judgment of the Ashtabula County Court of Common Pleas, convicting him, after a trial by jury, of six counts of Pandering Obscenity Involving a Minor or Impaired Person, felonies of the second degree. Appellant challenges the venue in which the indictment was prosecuted as well as the weight of the evidence supporting the convictions. We affirm.

{¶2} In August 2021, the Internet Crimes Against Children Task Force received a cyber tip from a social media platform, Snapchat, regarding child pornography being circulated on the site. The tip was sent to the National Center for Missing and Exploited

Children. That agency then sent the information to the Cuyahoga County Sheriff's Department, and that department routed the information to the Ashtabula County Sheriff's Office for investigation.

{¶3} The Ashtabula County Sheriff's Office investigated and found that the email address tied to the account had a phone number and residential address connected to appellant, who resided in Ashtabula County. Six files, containing explicit child pornographic material, were tied to appellant via his Snapchat account. Through investigation, the files were sent to and downloaded by appellant. The individual(s) who provided the materials were not involved directly in the underlying prosecution.

{¶4} Appellant was indicted on six counts of Pandering Obscenity Involving a Minor, in violation of R.C. 2907.321(A)(1)(C), felonies of the second degree. The matter was tried to a jury and, after the state rested, defense counsel moved for an acquittal on the merits of each count and additionally argued the state failed to provide sufficient evidence to establish venue in Ashtabula County beyond a reasonable doubt. The trial court took counsel's arguments under advisement, but eventually denied the motions.

{¶5} After trial, appellant was found guilty on each count. At sentencing, appellant spoke in allocution, and multiple family members provided statements in mitigation on his behalf. Ultimately, appellant was ordered to serve terms of imprisonment for seven years on each count (on count one, the court ordered an indefinite term of imprisonment of seven to 10.5 years), to be served consecutively to one another, for a total term of 42 years and a possible maximum term of 45.5 years. Appellant now appeals.

{¶6} As they are related, we shall address appellant's first and third assignments of error together. They provide:

{¶7} “[1.] The state of Ohio failed to produce legally sufficient evidence to sustain a conviction.

{¶8} “[3.] The trial court abused its discretion by overruling defense counsel’s Rule 29(A) and (C) motions.”

{¶9} Appellant argues the state failed to provide sufficient evidence that he created, reproduced, or published any of the various images or videos upon which the charges were premised in Ashtabula County. Appellant notes that testimony established his employment required him to travel from Ashtabula, to Cleveland, to Akron, and to Youngstown. According to appellant, however, the state failed to offer evidence that any element of the crimes at issue took place in Ashtabula County beyond a reasonable doubt.

{¶10} Venue generally refers to the proper place of trial for a criminal prosecution within a state. *See, e.g., State v. Meridy*, 12th Dist. Clermont No. CA2003-11-091, 2005-Ohio-241, ¶ 12. Establishing the correct venue is necessary in order to “give the defendant the right to be tried in the *vicinity* of his alleged criminal activity.” (Emphasis sic.) *Id.* at ¶ 12; *see also State v. Hendrix*, 11th Dist. Lake No. 2011-L-043, 2012-Ohio-2832, ¶92; *State v. Webster*, 8th Dist. Cuyahoga No. 102833, 2016-Ohio-2624, ¶ 78; *State v. Crowder*, 5th Dist. Delaware No. 19 CAA 01 0005, 2019-Ohio-3627, ¶ 16; *State v. Rivera*, 6th Dist. Lucas No. L-13-1177, 2014-Ohio 2690, ¶ 9. “The necessity of proving venue is to prevent the state from indiscriminately seeking a favorable location for trial or

selecting an inconvenient forum that could disadvantage a criminal defendant.” *Hendrix* at ¶ 92, citing *Meridy* at ¶ 12.

{¶11} In a criminal case, venue is not a material element, but the state must still prove venue beyond a reasonable doubt. *State v. Headley*, 6 Ohio St.3d 475, 477, 453 N.E.2d 716 (1983). Venue need not be proven in express terms. *Id.* Rather, it can be established by all of the facts and circumstances viewed in the light most favorable to the state. *State v. Chintalapalli*, 88 Ohio St.3d 43, 45, 723 N.E.2d 111 (2000). In addition, a trial court has broad discretion to determine the facts which would establish venue. See, e.g., *State v. Mills*, 6th Dist. Williams No. WM-09-014, 2010-Ohio-4705, ¶ 22; *State v. McVety*, 3d Dist. Logan No. 8-16-19, 2017-Ohio-2796, ¶ 10.

{¶12} Pursuant to Ohio’s venue statute, “[t]he 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.” R.C. 2901.12(A). Consequently, the requirement of “[v]enue is satisfied where there is a sufficient nexus between the defendant and the county of the trial.” (Citation omitted.) Put differently, to establish venue, the state must produce sufficient corroborating evidence to prove, beyond a reasonable doubt, that appellant created, reproduced, or published the materials in the charging county. See *State v. Foreman*, 166 Ohio St.3d 204, 2021-Ohio-3409, 184 N.E.3d 70, ¶ 26.

{¶13} With these points in mind, R.C. 2901.12 provides, in relevant part:

(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.

(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:

(1) The offenses involved the same victim, or victims of the same type or from the same group.

(2) The offenses were committed by the offender in the offender's same employment, or capacity, or relationship to another.

(3) The offenses were committed as part of the same transaction or chain of events, or in furtherance of the same purpose or objective.

(4) The offenses were committed in furtherance of the same conspiracy.

(5) The offenses involved the same or a similar modus operandi.

(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.

(I)(1) When the offense involves a computer, computer system, computer network, telecommunication, *telecommunications device*, telecommunications service, or information service, *the offender may be tried* in any jurisdiction containing any location of the computer, computer system, or computer network of the victim of the offense, *in any jurisdiction from which or into which, as part of the offense, any writing, data, or image is disseminated or transmitted by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service,* or in any jurisdiction in which the alleged offender commits any activity that is an essential part of the offense.

(Emphasis added.)

{¶14} A “telecommunications device” is defined as, among other things, any instrument that facilitates telecommunication, including a “cellular telephone.” R.C. 2913.01(Y).

{¶15} Appellant was convicted of six counts of Pandering Obscenity Involving a Minor, in violation of R.C. 2907.321(A)(1), which provides: “(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following: (1) Create, reproduce, or publish any obscene material that has a minor or impaired person as one of its participants or portrayed observers[.]”

{¶16} With this in mind, Detective James Kemmerle (“Det. Kemmerle”) testified that he received a complaint from the Internet Crimes Against Children Task Force alleging that appellant “possessed and disseminated or otherwise had in his possession, child pornography.” The detective then confirmed appellant’s address, phone number, birthdate, and a screen-user name “lover_boy1995”; the personal information matched appellant’s identity and residence and the screen-user name matched a Snapchat account belonging to appellant. In fact, the detective testified that the screen-user name “lover_boy1995” specifically belonged to appellant. The defense did not object. Det. Kemmerle contacted Snapchat and requested the preservation of appellant’s account records. Snapchat complied and provided a record of the videos and photos found in appellant’s account.

{¶17} Moreover, the state submitted evidence of an officer’s body cam during which Det. Kemmerle questioned appellant at his Ashtabula County address wherein appellant acknowledged living at the residence. Det. Kemmerle was able to retrieve the

phone that appellant allegedly used to send or receive the materials that provided a foundation for the charges.

{¶18} There was evidence that appellant *may have* committed the offenses at issue in one or more jurisdictions. Although appellant testified his employment takes him from Ashtabula County to Cuyahoga County to Summit County to Mahoning County, he did not assert he traveled in or to any other jurisdiction during the times relevant to the criminal activity (May 18, 2021 through June 30, 2021). The device appellant allegedly used to receive and reproduce or publish the offending images/videos was found at his residence in Ashtabula County. Because these points establish that the offenses may have occurred in two or more jurisdictions beyond a reasonable doubt, appellant was tried in the vicinity of the alleged criminal activities. Accordingly, we conclude venue in Ashtabula County was established under R.C. 2901.12(G).

{¶19} Moreover, because there were multiple, separate charges, the jury could infer that the conduct of which appellant was accused was part of a course of criminal conduct, as set forth under R.C. 2901.12(H). This inference is supported by the evidence that the victims were of the same type or group, i.e., young minor children. See R.C. 2901.12(H)(1). The alleged offenses were committed as part of the same transaction or chain of events, i.e., the solicitation, reception, and reproduction or publication of obscenity. See R.C. 2901.12(H)(3). The actions were committed in furtherance of the same conspiracy, i.e., receiving and/or reproducing or publishing the images or videos. See R.C. 2901.12(H)(4). And, finally, the offenses were part of the same modus operandi, i.e., obtaining and/or reproducing or publishing the images or videos. See R.C.

2901.12(H)(5). With these points in mind, the venue in Ashtabula County was sufficiently established pursuant to R.C. 2901.12(H).

{¶20} Finally, in light of the evidence, the jury could reasonably conclude that appellant received and reproduced or published the images/videos by means of his telecommunications device in Ashtabula County, the location of appellant's residence and where the device was retrieved. We acknowledge that appellant disputed receiving or reproducing the images/videos and insisted the images/videos appeared on his account as a result of a "hack." However, the jury heard this evidence and did not find it credible. Appellant does not take issue with the jury's consideration and evaluation of this substantive evidence. As a result, we conclude the evidence was sufficient to establish venue in Ashtabula County beyond a reasonable doubt, pursuant to R.C. 2901.12(I)(1).

{¶21} Appellant's first and third assignments of error lack merit.

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

{¶23} "Appellant's convictions fell against the manifest weight of the evidence."

{¶24} A court reviewing a challenge to the manifest weight of the evidence observes the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the 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. Schlee*, 11th Dist. Lake No. 93-L-082, 1994 WL 738452, *5 (Dec. 23, 1994). Put differently, the court must assess conflicting testimony, review rational inferences that may be drawn from the evidence, and evaluate the strength of the conclusions drawn therefrom. A challenge to the weight of the evidence requires a court to consider whether the state met its burden

of persuasion. *State v. McFeely*, 11th Dist. Ashtabula No. 2008-A-0067, 2009-Ohio-1436, ¶ 78.

{¶25} Appellant contends that the state failed to adduce credible evidence that appellant either created, reproduced, or published the photos/videos upon which his convictions are premised. As foreshadowed by the analysis above, we do not agree.

{¶26} The terms “create,” “reproduce,” or “publish” were not defined for the jury and we find no statute or case defining these terms in relation to the crime of Pandering Obscenity. “When words are not defined in a statute, however, they are given their plain and ordinary meaning, absent a contrary legislative intent.” *Conneaut v. Babcock*, 11th Dist. Ashtabula No. 2021-A-0045, 2022-Ohio-2101, ¶ 20, citing *State v. Conyers*, 87 Ohio St.3d 246, 249-250, 719 N.E.2d 535 (1999). The common meaning of the term “reproduce” is “to produce again: such as * * * (b) to cause to exist again or anew[.]” www.merriam-webster.com/dictionary/reproduce# (accessed Nov. 14, 2023). The common meaning of the word “publish” is “to produce or release for distribution[.]” www.merriam-webster.com/dictionary/publish (accessed Dec. 12, 2023)

{¶27} Under the circumstances, the evidence demonstrated that four of the five videos at issue were sent from “lover_boy1995” to a third party; a fifth video was sent from that third party to “lover_boy1995.” And a sixth video was sent from “lover_boy1995” to a separate third party. Appellant, as “lover_boy1995,” either received and downloaded or obtained and sent the obscene materials through his Snapchat account. Once downloaded, the materials sent to appellant’s Snapchat account were either produced anew (i.e., reproduced) or distributed to a third party (i.e. published) via telecommunications device or computer allegedly belonging to appellant. Due to the

damage to the cellular phone, the state was unable to establish that the videos were part of the memory of the device seized from appellant's residence. Nevertheless, appellant conceded the device was his and it was in use at the relevant times.

{¶28} Here, Det. Kemmerle received a tip regarding a child exploitation incident relating to appellant's Snapchat account and contacted the provider. The tip involved images and videos depicting prepubescent children engaging in sexual acts with adults and one child engaged in bestiality. The records indicated the images and videos were received and reproduced or published by appellant's account under his user name. The detective requested that the records from Snapchat be retained and Snapchat was able to preserve the records. Pursuant to a search warrant, Snapchat subsequently released the records to the Ashtabula County Sheriff's Office. Under the circumstances, the evidence was such that the jury could conclude, beyond a reasonable doubt, that appellant, either published or, upon receipt of the obscene materials from a third party, reproduced the images onto his device. Appellant's convictions are therefore not against the manifest weight of the evidence.

{¶29} Additionally, a determination that a judgment is not against the manifest weight the evidence necessarily means the judgment is supported by sufficient evidence. *State v. Arcaro*, 11th Dist. Ashtabula No. 2012-A-0028, 2013-Ohio-1842, ¶ 32. To the extent we have concluded the state met its burden of persuasion on the material elements of the crime, it therefore follows the convictions were supported by sufficient evidence. Thus, any claim that the convictions were not supported by sufficient evidence is without merit.

{¶30} Appellant's second assignment of error lacks merit.

{¶31} For the reasons discussed in this opinion, the judgment of the Ashtabula County Court of Common Pleas is affirmed.

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.