

[Cite as *State v. Cody*, 2015-Ohio-2261.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100797

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JOHN DONALD CODY A.K.A. BOBBY THOMPSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED IN PART; VACATED IN PART;
AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-565050-A

BEFORE: Keough, J., Boyle, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: June 11, 2015

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, John Donald Cody A.K.A. Bobby Thompson,¹ appeals his convictions. For the reasons that follow, we find that the state Ohio lacked jurisdiction over Counts 13 through 23 of the indictment, therefore, only those convictions, including the one-year sentence, are vacated. We also vacate the trial court's sentencing term ordering appellant to spend every Veteran's Day in solitary confinement. Appellant's remaining convictions and sentence are otherwise affirmed.

I. Background and Procedural History

{¶2} This case arises from an investigation regarding the United States Naval Veteran's Association ("USNVA"), a charity organized and created by a person holding himself out to be Bobby Thompson. Through the investigation, it was discovered that the USNVA was a sham, fabricated by a person named John Donald Cody, who manipulated unsuspecting individuals across the United States to donate to this charity, unlawfully procuring millions of dollars.

{¶3} In mid-2010, the state of Ohio began its investigation into the USNVA after a story was published in the St. Petersburg Times that the charity was fictitious. Through its investigation, the state revealed that Ohio residents had been solicited by various professional fundraisers contracted by USNVA to donate money to the USNVA. It was

¹After sentencing, the caption in the lower case was changed to reflect that the defendant's real name is John Donald Cody a.k.a. Bobby Thompson. In this opinion, the defendant is referred to as appellant.

discovered that approximately \$2 million was solicited on behalf of the USNVA from resident-donors in the state of Ohio.

{¶4} As a result of the investigation, on October 13, 2010, appellant was indicted in Cuyahoga C.P. No. CR-10-543025 on charges of engaging in a pattern of corrupt activity involving the USNVA, money laundering, and aggravated theft. In December 2010, another indictment was issued against appellant in Cuyahoga C.P. No. CR-10-545577 on 22 additional charges, including engaging in a pattern of corrupt activity, aggravated theft, money laundering, tampering with records, and identity fraud.

{¶5} A warrant was subsequently issued for appellant's arrest. In April 2012, appellant was finally apprehended in the state of Oregon. After appellant was in custody in Ohio, a new indictment was issued against him in July 2012, Cuyahoga C.P. No. CR-12-565050. Appellant was charged with one count each of engaging in a pattern of corrupt activity pertaining to the criminal enterprise of the USNVA, complicity to commit theft, tampering with records, complicity to tamper with records, identity fraud (a felony of the second degree), and possessing criminal tools; and seven counts of complicity to commit money laundering, and 11 counts of identity fraud (felonies of the fifth degree). The previous indictments issued in Case Nos. CR-10-543025 and CR-10-545577 were dismissed and the surviving indictment in Case No. CR-12-565050 ultimately was tried before a jury that heard testimony from 47 witnesses and viewed over 200 exhibits.

{¶6} At the close of evidence, the court granted appellant's renewed Crim.R. 29 motion for judgment of acquittal as it pertained to Count 24, possessing criminal tools.

The court concluded that the state of Ohio lacked jurisdiction to pursue this charge because, although the criminal tools were found in appellant's possession when he was arrested, they were located in the state of Oregon.

{¶7} The jury returned a guilty verdict on the 23 remaining counts. After considering merger, the trial court imposed a total sentence of 28 years in prison and ordered that appellant spend every Veteran's Day in solitary confinement.

{¶8} Appellant now appeals raising three assignments of error. This court sua sponte ordered the parties to address an additional issue regarding the instructions given to the jury on Counts 13 through 23.

II. Jurisdiction — Counts 13 through 23

{¶9} The identity fraud Counts 13 through 23 of the indictment identified different applicable time periods and pertained to different victims, but consistently charged, in relevant part,

* * * [i]n a continuing course of conduct involving offenses committed in Cuyahoga County, Ohio, Defendant did without the express or implied consent of the other person, use, obtain, or possess any personal identifying information of another person with intent to hold themselves out to be the other person and/or represent the other person's identifying information as the Defendant's own personal identifying information as provided in R.C. 2913.49(B).

* * * The commission of the offense was part of a course of continuing conduct involving offenses committed in Cuyahoga County per R.C. 2901.12(E), and/or (H).

{¶10} In his first assignment of error, appellant contends that the trial court erred and violated due process when it entered convictions for 11 counts of identity fraud for

which it did not have jurisdiction. Appellant presents the following issue: whether Ohio has jurisdiction to prosecute these identity-fraud crimes, which were committed in another state, where no element of the offenses was committed in Ohio, and the crimes did not result from criminal offenses committed in Ohio. He relies on Ohio's jurisdictional statute, R.C. 2901.11.

{¶11} The state contends that Ohio has jurisdiction over these crimes because they were committed in a continuing course of criminal conduct pursuant to Ohio's venue statute under R.C. 2901.12(H). Specifically, the state contends that Ohio has jurisdiction over the 11 identity-fraud counts because these charges naturally flowed in the course of events of appellant's crimes of engaging in a pattern of corrupt activity, theft, and tampering with records involving the USNVA. Additionally, the state asserts that the use of the identities allowed appellant to evade apprehension and avoid detection by the state of Ohio after the indictment and arrest warrant were issued. The state does not identify or make any argument pertaining to any section under R.C. 2901.11 to establish jurisdiction for these 11 counts.

{¶12} R.C. 2901.11 grants jurisdiction to Ohio courts over criminal offenses that occur in Ohio. "Jurisdiction" refers to the judicial power to hear and determine a criminal prosecution. *State v. Williams*, 53 Ohio App.3d 1, 4-5, 557 N.E.2d 818 (10th Dist.1988). This is called "territorial jurisdiction" or "subject matter jurisdiction." *Id.* at 5.

{¶13} “Venue,” on the other hand, is governed by R.C. 2901.12. Venue commonly refers to the appropriate place of trial for a criminal prosecution within a state. *Id.*, citing *State v. Shrum*, 7 Ohio App.3d 244, 245, 455 N.E.2d 531 (1st Dist.1982), fn.3 (venue refers to the appropriate place of trial for a criminal prosecution as between different geographical subdivisions within a state, it being assumed that the court or courts involved have subject matter or territorial jurisdiction).

{¶14} Therefore, jurisdiction and venue are not the same; once jurisdiction is established, then venue is determined. In fact, “the Legislative Service Committee comments to R.C. 2901.12 state, ‘[t]his section *presupposes that the state has jurisdiction to try an offender*, and speaks to the question of where the trial is to take place.’” (Emphasis sic.) *State v. Yarbrough*, 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845, ¶ 46, quoting 1974 Committee Comment to H 511.

{¶15} Accordingly, the state’s reliance on R.C. 2901.12(H) to establish territorial jurisdiction over appellant pertaining to Counts 13 through 23 is misplaced. “The General Assembly did not include ‘course of criminal conduct’ in R.C. 2901.11, the jurisdictional statute.” *Yarbrough* at ¶ 45.

{¶16} Nevertheless, this court must still determine whether Ohio had jurisdiction over these 11 identity fraud counts pursuant to R.C. 2901.11. “‘Subject matter jurisdiction is a question of law, which we review de novo.’” *ABN AMRO Mtge. Group, Inc. v. Evans*, 8th Dist. Cuyahoga No. 96120, 2011-Ohio-5654, ¶ 5, quoting *Udelson v. Udelson*, 8th Dist. Cuyahoga No. 92717, 2009-Ohio-6462, ¶ 13.

{¶17} Counts 13 through 23 pertain to evidence that was discovered following appellant's arrest in the state of Oregon. When appellant was finally apprehended in the state of Oregon in April 2012, he possessed on his person three wallets that each contained different identifications — Anderson Yazzie (Count 18), Kenneth D. Morsette (Count 16), and Alan Lacy (Count 19). A review of the record reveals that the names Anderson Yazzie, Kenneth D. Morsette, and Alan Lacy have no apparent connection to the USNVA. However, appellant used the identity of Kenneth D. Morsette in March 2012 to rent a room at a rooming house in Portland, Oregon.

{¶18} In addition to the wallets, appellant also possessed a set of keys. One of the keys opened a storage locker in Portland, Oregon. The locker was rented under the name of Alan Lacy (Count 19). Inside the storage locker were two suitcases — one with over \$940,000 in cash bundled inside newspapers, and the second suitcase with numerous identification documents for seven other individuals — Anatoly Volokhonskiy (Count 13), Arthur V. Burrola (Count 14), Dale Booqua (Count 15), Richard L. Overturf, Jr. (Count 17), Michael Delaney (Count 20), Vincent Yazzie (Count 21), Albert Gross-Ventre (Count 22). There was no evidence that appellant used these identities or identification information in furtherance of his criminal enterprise in laundering money through the USNVA.

{¶19} During the course of the investigation, it was learned that after the USNVA was discovered to be fictitious, appellant used the identity of Ronnie Brittain (Count 23) to open bank accounts and create the "Plymouth Rock Society," a non-profit church

affiliated organization. However, a review of the record reveals that there is no apparent connection between the name Ronnie Brittain or the establishment of the Plymouth Rock Society and the USNVA.

{¶20} Applying the facts and circumstances to the subsections of R.C. 2901.11, we must determine whether Ohio has jurisdiction over these 11 identity fraud counts. We make this determination while recognizing that the General Assembly intended to grant Ohio broad jurisdiction. Specifically, R.C. 2901.11(G) provides that “[t]his section shall be liberally construed, consistent with the constitutional limitations, to allow this state the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting this state.”

{¶21} Pursuant to R.C. 2901.11(A)(1), a person is subject to criminal prosecution and punishment in the state of Ohio if a person commits an offense under Ohio law in which any element of which takes place in this state. This section is not applicable and does not grant Ohio jurisdiction over these identity fraud counts because none of the identity fraud elements occurred in Ohio.

{¶22} R.C. 2901.11(A)(2) applies when an individual, while in the state of Ohio, attempts to commit acts with complicity, or conspires to commit an offense in another jurisdiction. Evidence was presented that appellant traveled to Ohio on a few occasions to meet with the USNVA’s attorney to discuss the dealings of the USNVA as they related to an audit in Connecticut. However, no evidence was presented that appellant obtained or utilized any of the identities identified in Counts 13 through 23 during these visits or

that he possessed these identities while in the state of Ohio. Based on the evidence presented, the identity fraud offenses were not committed or attempted in any way, complicit or otherwise, while appellant was in Ohio. Furthermore, the indictment demonstrates that appellant was not charged with conspiracy to commit the identity fraud offenses. Finally, the identity fraud offenses were not the result of any of the other crimes in this case that were committed in Ohio — they were not connected to the USNVA. Therefore, R.C. 2901.11(A)(2) does not apply.

{¶23} Reviewing the subsections conferring jurisdiction over individuals whose actions occur outside the state of Ohio, we find that only subsections (A)(3) or (A)(5) could potentially be applicable. Subsection (A)(3) confers jurisdiction if, 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.” This section does not apply because the identities appellant assumed were not those of individuals from the state of Ohio, and no evidence was presented that appellant used any of the identities while in Ohio or to further the criminal enterprise involving the USNVA.

{¶24} Subsection (A)(5) of R.C. 2901.11 confers jurisdiction if, while out of Ohio, “the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into this state.” This section does not give Ohio jurisdiction over these identity fraud counts because no evidence was presented that appellant brought any unlawfully obtained or retained property into Ohio under the guise or use of the assumed identities.

{¶25} Finally, subsection (A)(7) gives Ohio jurisdiction if a person “by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, causes or knowingly permits any writing, data, image, or other telecommunication to be disseminated or transmitted into [Ohio] in violation of the law of [Ohio].” No evidence was presented that appellant used the identities or personas of the 11 individuals named in Counts 13 through 23 in any way that would satisfy the jurisdictional requirement of R.C. 2901.11(A)(7).

{¶26} When considering whether they have jurisdiction over crimes committed over state boundaries, courts have looked at the crimes and circumstances themselves. In *Shrum*, 7 Ohio App.3d 244, 455 N.E.2d 531, the First District considered whether Ohio had jurisdiction over a rape that occurred in the state of Kentucky. The court recognized that the employment of force and threat of force began in Ohio and persisted in a continuous, unbroken sequence until the culmination of the rape in Kentucky. *Id.* at paragraph one of the syllabus. Therefore, the court determined that because the “force” element of the crime was used in Ohio, Ohio has territorial jurisdiction pursuant to R.C. 2901.11(A)(1) over the rape offense. *Id.*

{¶27} In *State v. Hall*, 8th Dist. Cuyahoga No. 90365, 2009-Ohio-461, ¶ 80, this court determined that, although much of the defendant’s criminal activity occurred in states other than Ohio, the conspiracy that made up the RICO charge clearly occurred in Ohio, thus giving Ohio jurisdiction over the RICO charges. Additionally, other indicted offenses pertained to activity that occurred in Ohio, and the money laundering count was

properly under the jurisdiction of Ohio under R.C. 2901.11(D) because the money was commingled from multiple states. *Id.*

{¶28} From these cases, it appears that Ohio's broad jurisdictional arm reaches to offenses when the offenses are a continuation or have a reasonable connection to the underlying criminal enterprise. In this case, the underlying criminal enterprise, as indicted, involves the USNVA. Therefore, the state of Ohio would have territorial jurisdiction over those indicted offenses that bear a reasonable connection to the USNVA.

{¶29} Considering all the subsections of R.C. 2901.11, including Ohio's broad and liberal jurisdictional arm, and the relevant case law, we find that the identity fraud charges in Counts 13 through 23 have no reasonable connection to the underlying criminal enterprise involving the USNVA for which appellant was prosecuted. There was no evidence that appellant used these identities or identification information in furtherance of his criminal enterprise in laundering money through the USNVA that affected the state of Ohio. Pursuant to R.C. 2901.11, the state of Ohio did not have jurisdiction over the 11 counts of identity fraud contained in Counts 13 through 23. Appellant's assignment of error is sustained, and his convictions on those counts are hereby vacated.

{¶30} Finding merit to this assignment of error renders moot the sua sponte issue this court raised regarding the jury instructions given on Counts 13 through 23.

III. Admission of Evidence

{¶31} In his second assignment of error, appellant contends that his rights to due process and a fair trial were violated when the trial court allowed the admission of irrelevant and overly prejudicial testimonial and documentary evidence regarding other charitable organizations he was establishing, specifically, the Quaker Penn's Landing and Plymouth Rock Society of Christian Pilgrims.

{¶32} The state argues that the evidence was proper to demonstrate intent, plan, preparation, identity, and absence of mistake. During trial, the state maintained that after appellant realized that the USNVA has been discovered to be fictitious and illegitimate, he traveled to Boston and opened bank accounts under the name of Ronnie Brittain, including an account for the Plymouth Rock Society, a non-profit church affiliated organization. Testimony and documentary evidence was presented regarding the development and formation of the Plymouth Rocky Society and Quaker Penn's Landing, another non-profit organization. The state's theory was that once the USNVA was exposed, appellant moved on to a new identity and a new scheme.

{¶33} No objection was made to the introduction of this evidence. The failure to raise a timely objection at a time when the trial court can correct an error constitutes a waiver of any objection to the admissibility of evidence. Nevertheless, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Crim.R. 52(B). Therefore, plain error occurs only when, but for the error, the outcome of the trial clearly would have been different. *State v. Long*, 53

Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph two of the syllabus; *State v. Hill*, 92 Ohio St.3d 191, 203, 2001-Ohio-141, 749 N.E.2d 274.

{¶34} Under Evid.R. 402, only relevant evidence is admissible. Evidence is considered relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid.R. 401. Nevertheless, even relevant evidence “is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.” Evid.R. 403(A). Unfair prejudice is “that quality of evidence that might result in an improper basis for a jury decision.” *State v. Crotts*, 104 Ohio St.3d 432, 2004-Ohio-6550, 820 N.E.2d 302, ¶ 24. Therefore, evidence, which “arouses the jury’s emotional sympathies, evokes a sense of horror, or appeals to an instinct to punish” may be unfairly prejudicial. *Oberlin v. Akron Gen. Med. Ctr.*, 91 Ohio St.3d 169, 172, 743 N.E.2d 890 (2001), quoting Weissenberger’s *Ohio Evidence* (2000) 85-87, Section 403.3. Evidence that is unfairly prejudicial “appeals to the jury’s emotions rather than intellect.” *Id.*

{¶35} Assuming without deciding that the testimony and evidence regarding Quaker Penn’s Landing and Plymouth Rock Society was unfairly prejudicial, the admission of such evidence does not rise the level of plain error. Overwhelming evidence was presented to the jury that appellant assumed the identity of Bobby Thompson, created a fictitious charitable organization, laundered millions of dollars from citizens across the United States, including the state of Ohio, and continued to engage in this pattern of

corrupt activity for years. The jury did not need to hear additional testimony regarding other seemingly fictitious enterprises to find appellant guilty in this case.

{¶36} Due to the overwhelming evidence of appellant's guilt regarding the charges of engaging in a pattern of corrupt activity, tampering with evidence, identity fraud (Count 12), complicity money laundering, and theft, the trial court's admission of this testimony, even if unfairly prejudicial, does not rise to the level of plain error, such that the outcome of the trial would have been different if the evidence were omitted. *Long*, 53 Ohio St.2d 91, 372 N.2d 804, at paragraph two of the syllabus; *State v. Thompson*, 33 Ohio St.3d 1, 10, 514 N.E.2d 407 (1987). Accordingly, the assignment of error is overruled.

IV. Solitary Confinement

{¶37} At sentencing, the trial court ordered appellant to spend every Veteran's Day in solitary confinement. In his final assignment of error, appellant contends that the trial court lacked the authority to impose this type of punishment. The state concedes the error and after reviewing the relevant case law, we agree. *See State v. Williams*, 8th Dist. Cuyahoga No. 88737, 2007-Ohio-5073, ¶ 20 (there is no statutory provision for this type of punishment and it is contrary to law). Appellant's third assignment of error is sustained.

V. Conclusion

{¶38} Judgment affirmed in part and vacated in part. This case is remanded to the trial court to enter a new judgment entry of conviction to reflect that Counts 13 through

23 are vacated, including appellant's 12-month total sentence imposed for these offenses.

The trial court is also ordered to vacate the imposition of solitary confinement.

It is ordered that appellant recover from the appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, in part, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

MARY J. BOYLE, P.J., and
TIM McCORMACK, J., CONCUR