

[Cite as *State v. Coley*, 2004-Ohio-5498.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-040031
	:	TRIAL NO. B-0008697
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
RONALD J. COLEY, a.k.a. WAAJID	:	
BASHIR,	:	
	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: October 15, 2004

Michael K. Allen, Hamilton County Prosecutor, and *Thomas J. Boychan, Jr.*, Assistant County Prosecutor, for Plaintiff-Appellant,

John K. Issenmann, for Defendant-Appellee.

Please note: We have sua sponte removed this case from the accelerated calendar.

Per Curiam.

{¶1} Plaintiff-appellant, the state of Ohio, appeals the trial court's judgment dismissing an indictment against defendant-appellee Ronald Coley for lack of subject-matter jurisdiction and venue. For the following reasons, we reverse.

{¶2} The record indicates that Coley has never resided in Ohio. Coley and his ex-wife were married in Kentucky, where they lived until they separated. Eventually, a Kentucky court terminated their marriage and issued a support order against Coley. Following the divorce, Coley moved to Georgia, where he has since resided, and his ex-wife and child moved to Hamilton County, Ohio.

{¶3} On November 29, 2000, Coley was indicted in Hamilton County for failing to provide support to his child in violation of R.C. 2919.21(A)(2). Although Coley's child then lived with his ex-wife in Hamilton County, and Coley had previously been convicted of criminal nonsupport by the Hamilton County Court of Common Pleas, Coley argued, in support of his motion to dismiss the indictment, that he should be prosecuted in Georgia, where he then resided. The trial court agreed and dismissed the indictment against Coley.

{¶4} In its single assignment of error, the state contends that the trial court erred in dismissing the indictment. The state maintains that because Coley's child had established residency in Hamilton County, the trial court had jurisdiction and venue to prosecute and punish Coley for nonsupport.

{¶5} Statutory law governs the criminal jurisdiction of Ohio trial courts. R.C. 2901.11(A) states that a person is subject to criminal prosecution and punishment in this state when “(1) [t]he person commits an offense under the laws of this state, any element of which takes place in this state * * * [or] (4) [w]hile out of this state, the person omits to perform a legal duty imposed by the laws of this state, which omission affects a legitimate interest of the state in protecting, governing or regulating any person, property, thing, transaction, or activity in this state.” The elements of criminal nonsupport are set

forth in R.C. 2919.21(A)(2), which provides that “[n]o person shall abandon, or fail to provide adequate support to * * * [t]he person’s child who is under age eighteen * * *.”

{¶6} In determining whether Ohio trial courts have jurisdiction to prosecute and punish a defendant who resides out of state for nonsupport of a child, the Third Appellate District, in *State v. Wood*,¹ held that “a criminal defendant can be prosecuted in the state where his children reside, even if the defendant is not a resident of that state.”² In *Wood*, the father and mother had been married and divorced in Illinois, and an Illinois court had issued a child-support order against the father. After the divorce, the mother and child moved to Ohio, while the father remained in Illinois. The court, in holding that the father could be prosecuted in Ohio for failing to support his child, reasoned that the elements of the crime of nonsupport had taken place in Ohio because the child resided in Ohio, and Ohio was where the child had suffered the consequences of the father’s nonsupport.³ Additionally, the court noted that the failure of the father to adequately support his child had affected a legitimate interest of the state in protecting children that were residents of Ohio.⁴

{¶7} We agree with the reasoning in *Wood* and hold that the Hamilton County Court of Common Pleas had jurisdiction to prosecute and punish Coley for criminal nonsupport, because his child resided in Ohio and had suffered the consequences of Coley’s nonsupport in this state.⁵ We also hold that the Hamilton County Court of Common Pleas had venue in this case.⁶ The state’s assignment of error is sustained.

¹ 3rd Dist. No. 8-99-11, 2000-Ohio-1641.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See, also, *State v. Keslar* (Nov. 17, 1999), 4th Dist. No. 98CA20 (although father resided elsewhere, Ohio had jurisdiction to prosecute him for criminal nonsupport).

⁶ See *Wood*, *supra*.

{¶8} Accordingly, we reverse the judgment of the trial court and remand this case for further proceedings consistent with the law and this decision.

Judgment reversed and cause remanded.

HILDEBRANDT, P.J., GORMAN and SUNDERMANN, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.