

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

State of Ohio

Court of Appeals No. WM-14-002

Appellee

Trial Court No. 13CR087

v.

Edgar H. Santana

DECISION AND JUDGMENT

Appellant

Decided: February 13, 2015

* * * * *

Kirk E. Yosick, Williams County Prosecuting Attorney, and
Katherine J. Zartman, Assistant Prosecuting Attorney, for appellee.

Kenneth J. Rexford, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Edgar Santana, appeals his conviction in the Williams County Court of Common Pleas, on seven counts of trafficking of marijuana, a felony of the third

degree, and one count of engaging in a pattern of corrupt activity, a felony in the second degree. The last count carried a specification that at the time of the offense, appellant possessed \$6,650.00 cash, which was an instrumentality used in the commission or facilitation of the offense, and is subject to seizure and forfeiture pursuant to R.C. 2981.02 and 2981.04. Because appellant sufficiently committed elements of the crime within the state of Ohio giving the trial court subject-matter jurisdiction over him, we affirm.

{¶ 2} The relevant facts are as follows. Appellant is a resident of the state of Texas and was periodically in communication with a confidential informant who is a resident of Williams County, Ohio. Appellant would sell marijuana to informant, who would travel to Texas to receive it and pay for it using money orders sent from a bank in Ohio. Upon returning to Ohio, informant would distribute and sell the marijuana.

{¶ 3} On June 17, 2013, appellant was indicted on seven counts of trafficking in marijuana in violation of R.C. 2925.03(A)(1)(C)(3)(d), felonies of the third degree; one count of trafficking in marijuana, in violation of R.C. 2925.03(A)(1)(C)(3)(d), a felony of the second degree, and one count of engaging in a pattern of corrupt activity, in violation of R.C. 2923.32(A)(1), a felony of the second degree.

{¶ 4} On July 22, 2013, appellant filed a motion to dismiss the indictment. Appellant argued that because he had never been in Ohio, and none of the elements of the transaction occurred in Ohio, the Williams County Court of Common Pleas lacked jurisdiction over appellant.

{¶ 5} On July 22, 2013, appellant also submitted a motion to dismiss the charge of engaging in a pattern of corrupt activity (“EPCA”), because the state did not have evidence to show that appellant was associated with any enterprise, which is primary element of EPCA. Both motions were denied by the trial court.

{¶ 6} On April 10th, 2014, appellant pled guilty to the charges with the agreement that the state would dismiss the second degree trafficking count. Appellant was sentenced to four years in prison.

{¶ 7} Appellant sets forth the following assignment of error:

I. The Trial Court erred by not dismissing the case but instead accepting a plea of Guilty and sentencing Mr. Santana when the trial Court lacked jurisdiction over the person of Mr. Santana, who never entered the State [sic] of Ohio prior to the Indictment, and over his alleged acts, none of which occurred in Ohio.

{¶ 8} In his sole assignment of error, appellant contends that the trial court did not have jurisdiction over him because he was not, nor had he ever been within the state of Ohio. Appellant argues that all elements of the trafficking, except for a phone call, occurred outside of Ohio territorial state lines, and therefore does not give Ohio any jurisdiction over appellant.

{¶ 9} A court’s jurisdiction is its “statutory or constitutional power to adjudicate the case.” *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11, citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003,

140 L.Ed.2d 210 (1998). Jurisdiction is separated into two concepts, personal and subject-matter. Subject-matter jurisdiction is a court’s power to hear and decide a case based upon the merits. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). Personal Jurisdiction is a court’s power over the person in the case. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 10.

{¶ 10} We begin our analysis with the issue of personal jurisdiction. Any issues relating to personal jurisdiction are waived by a defendant upon “voluntary submission at an initial appearance or by entering a plea of not guilty.” *Mbodji* at ¶ 10, citing *State v. Holbert*, 38 Ohio St.2d 113, 118, 311 N.E.2d 22 (1974). Appellant waived the personal jurisdiction issue by entering into his original plea of not guilty on July 2, 2013.

{¶ 11} Next, we must determine if the trial court correctly exercised its subject-matter jurisdiction over appellant. Subject-matter jurisdiction cannot be waived. Municipal courts in Ohio are given jurisdiction over felonies that are committed within their territory. R.C. 1901.20(B). For the trial court to have subject-matter jurisdiction over appellant, we must determine whether or not some aspect of the crime occurred within the state of Ohio.

{¶ 12} The state argues that under R.C. 2901.11, sufficient elements of the crimes occurred in Ohio to grant the trial court jurisdiction over appellant. Both appellant and the state cite to R.C. 2901.11(A) which states in pertinent part:

(A) A person is subject to criminal prosecution and punishment in this state if any of the following occur:

(1) The person commits an offense under the laws of this state, any element of which takes place in this state.

* * *

(3) 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.

* * *

(7) The 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 this state in violation of the law of this state.

{¶ 13} Ohio courts have determined that R.C. 2901.11(A)(1) should be interpreted broadly. In *State v. Campa*, 1st Dist. Hamilton No. C-010254, 2002 WL 471174, ¶ 9, (Mar. 29, 2002), the court held that “an offer to sell drugs over the phone to a person in Ohio is sufficient to establish jurisdiction.” Appellant counters this argument by showing that appellant did not make the phone call and did not make an offer to sell, instead the informant called and made an offer to buy. The state alleges that the informant was returning a call that had already been made by appellant.

{¶ 14} In *State v. Foster*, 1st Dist. Hamilton No. C-960278, 1997 WL 162823, (Apr. 2, 1997), the court determined that a phone call was enough to establish an offer to sell drugs. The court noted “[a]n offer is the declaration of one’s readiness and willingness to sell.” *Id.* at ¶ 3, citing *State v. Scott*, 69 Ohio St.2d 439, 440, 432 N.E.2d 798 (1982). By telling the informant that he had the drugs and that they would be ready for informant on August 9, 2012, appellant made an offer to sell within Ohio, which violates R.C. 2901.11(A)(1) and grants Ohio subject-matter jurisdiction over him.

{¶ 15} Next, appellant argues that R.C. 2901.11(A)(3) does not apply as there was no conspiracy or complicity within Ohio by appellant. Appellant was never in Ohio, and had no connection to the state other than the communications with informant, therefore appellant had no interest or ties in Ohio which would constitute a conspiracy.

{¶ 16} In *State v. Cabrales*, 1st Dist. Hamilton No. C-050682, 2007-Ohio-857, the court found that a conspiracy had occurred even though Cabrales had not entered the state. The court determined that because Cabrales had sufficient information to know that the drugs were being sold in Ohio, he was part of the conspiracy to sell them within the state. In *State v. Dominguez*, 1st Dist. Hamilton No. C-980148, 1999 WL 34605, (Jan. 29, 1999), the court was presented with a similar argument, and they note:

It is reasonable to assume that Dominguez, who supplied the drugs and who apparently worked closely with Mr. and Mrs. Alvarado, was also aware of the drugs’ intended destination. Thus, we conclude that there was

sufficient evidence for Ohio--and Hamilton County--to assert its broad jurisdiction over this crime. *Id.* at ¶ 12

{¶ 17} Appellant states that it seems obvious that R.C. 2901.11(A)(7) does not apply. We disagree. The electronic communications between appellant and informant consisted of phone calls and electronic transfer of money. In *Dominquez*, the court determined that a phone call was sufficient to establish jurisdiction, even when one person on the phone was outside of Ohio. *See also State v. Cabrales, supra*; and *State v. Cline*, 2d Dist. Champaign No. C-07CA02, 2008-Ohio-1866 (phone calls are considered telecommunications); *State v. Montenegro*, 1st Dist. Hamilton No. C-010160, 2001 WL 1635608 (Dec. 21, 2001) (multiple phone calls between drug dealer outside of Ohio and police officer in Ohio were sufficient to grant Ohio jurisdiction over drug dealer, even though the officer initiated some of the phone calls).

{¶ 18} The state alleges that appellant and informant had periodically been in communication with each other for previous business transactions and that appellant made a call to informant on August 8, (three days after the recorded conversation) where the two confirmed the deal and worked out details of the transaction. Because appellant pled guilty, he accepted all alleged facts of the crimes as stated by the state. *See State v. Alshire*, 5th Dist. Licking No. C-2011-CA-73, 2012-Ohio-16, ¶ 30 (“In the instant case, by pleading guilty, appellant admitted the allegations as set forth by the prosecutor.”). *See also State v. Stumpf*, 32 Ohio St.3d 95, 104, 512 N.E.2d 598 (1987) (“By entering his guilty plea to the principal charge and to the specification under R.C. 2929.04(A)(3),

appellant admitted that *he* murdered [the victim] for the purpose of avoiding detection, apprehension, trial or punishment for *his* crimes of attempted aggravated murder and aggravated robbery.” (emphasis in original)). The allegations fulfill the requirements of R.C. 2901.11(A)(7), giving Ohio jurisdiction over appellant.

{¶ 19} In sum, the interactions between appellant and informant satisfy R.C. 2901.11(A). Appellant committed a felony within the state of Ohio, and therefore the Williams County Court of Common Pleas has, and correctly exercised its subject-matter jurisdiction over appellant.

{¶ 20} For the foregoing reasons, appellant’s sole assignment of error is found not well taken.

{¶ 21} The judgment of the Williams County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App. R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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