

**OHIO COURT OF APPEALS, SECOND APPELLATE DISTRICT,
MONTGOMERY COUNTY**

State v. Pacific

2021 Ohio 973 (Ohio Ct. App. 2021) · No. Appellate Case No. 28804 · Decided March 26, 2021

SUMMARY

The Ohio Second District Court of Appeals affirmed Christopher Pacific’s conviction for fifth-degree-felony breaking and entering under R.C. 2911.13(A). The court held that correcting the property address in the indictment and bill of particulars did not change the identity of the offense or prejudice Pacific, and it rejected his challenges concerning a continuance, sufficiency and weight of the evidence, and the alleged sentencing-entry inconsistency. The opinion discusses force or stealth, trespass, unoccupied structures, and the purpose to commit a theft offense or felony.

CASE DETAILS

COURT	Ohio Court of Appeals, Second Appellate District, Montgomery County
WRITING FOR THE COURT	Epley, J.; Tucker, P.J.; Hall, J.
JURISDICTION	Ohio
DECIDED	March 26, 2021
DOCKET	Appellate Case No. 28804
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pacific appealed his bench-trial conviction for felony-fifth-degree breaking and entering, challenging amendment of the indictment and bill of particulars, denial of a continuance and Crim.R. 29 motions, the manifest weight of the evidence, and discrepancies between the oral sentence and written judgment entry.
STANDARD OF REVIEW	Whether an indictment amendment changes the name or identity of the offense is reviewed de novo; if it does not, the decision to permit amendment is reviewed for abuse of discretion. Sufficiency of the evidence is reviewed to determine whether, viewing the evidence most favorably to the State, any rational factfinder could find the essential elements proven beyond a reasonable doubt. Manifest-weight claims require review of the entire record, with reversal only in exceptional circumstances when the factfinder clearly lost its way and created a manifest miscarriage of justice. Denial of a continuance after an

	indictment amendment was not reviewable because Pacific did not move for a new trial as required by Crim.R. 7(D).
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the applicable Ohio appellate district subject to Ohio law governing appellate precedent.
PARTIES	Christopher Pacific v. State of Ohio

TOPICS

criminal procedure appellate procedure evidence statutory interpretation preservation of error

PRACTICE AREAS

criminal law criminal procedure appellate practice

QUESTIONS PRESENTED

1. Whether the trial court properly permitted the State to amend the indictment and bill of particulars to correct the greenhouse property's address.
2. Whether the trial court improperly denied Pacific's request for a continuance after permitting the amendment.
3. Whether the evidence was legally sufficient to support a conviction for breaking and entering under Ohio Revised Code § 2911.13(A).
4. Whether the conviction was against the manifest weight of the evidence.
5. Whether the appellate court should modify the judgment entry to correct discrepancies concerning the degree of the felony and the alternate prison term for violating community control.

HOLDINGS

1. An amendment correcting the address of the nursery or greenhouse property did not change the name or identity of the breaking-and-entering offense, and the trial court did not abuse its discretion in permitting the amendment because Pacific was not prejudiced.
2. Pacific's challenge to the denial of a continuance was not reviewable because he did not file a motion for a new trial as required by Crim.R. 7(D); in any event, the record did not show prejudice or a resulting failure of justice.
3. The evidence was sufficient to sustain Pacific's conviction under R.C. 2911.13(A).
4. Pacific's conviction was not against the manifest weight of the evidence.
5. Pacific's requests to modify the judgment entry were moot because the entry already correctly stated that the offense was a fifth-degree felony and that the alternate prison term was 12 months.

KEY QUOTATIONS

“Crim.R. 7(D) authorizes the trial court – at any time before, during, or after a trial – to amend the indictment in respect to “any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged.”” (¶ 11)

“The relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime proven beyond a reasonable doubt.” (¶ 24)

“Rather, we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (¶ 25)

“It is well established that “a court speaks only through its journal entries, not through its oral pronouncements.”” (¶ 54)

FACTUAL BACKGROUND

Sheriff's deputies responded to a reported breaking and entering at a former commercial greenhouse property. They encountered Pacific inside the greenhouse using a chainsaw to cut a motor or air-conditioning unit, and the property was in substantial disrepair and not being operated as a business. The indictment and bill of particulars incorrectly identified the property address as 5345 Germantown Pike rather than 5335 Germantown Pike, but the State's evidence and defense preparation concerned the same greenhouse property.

PROCEDURAL HISTORY

Pacific was indicted in the Montgomery County Court of Common Pleas for violating Ohio Revised Code § 2911.13(A). After a bench trial, the court found him guilty and imposed up to five years of community control. During trial, the court permitted the State to amend the address in the indictment and bill of particulars and denied a continuance. The court also denied Pacific's Crim.R. 29 motions. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Buehner, 110 Ohio St. 3d 403, 2006-Ohio-4707, 853 N.E.2d 1162, ¶ 7
- State v. Young, 2d Dist. Greene No. 2019-CA-18, 2020-Ohio-1044, ¶ 28
- State v. Weber, 2d Dist. Montgomery No. 25508, 2013-Ohio-3172, ¶ 29
- State v. Villamor-Goubeaux, 2016-Ohio-7420, 72 N.E.3d 1185, ¶ 54 (2d Dist.)
- State v. Frazier, 2d Dist. Clark No. 2008-CA-118, 2010-Ohio-1507, ¶¶ 22-23
- State v. Darmond, 135 Ohio St. 3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34
- State v. Hudson, 2018-Ohio-423, 106 N.E.3d 205, ¶ 16 (2d Dist.)
- State v. Johnson, 2d Dist. Montgomery No. 26961, 2017-Ohio-5498, ¶¶ 18-21

- State v. Reeves, 2d Dist. Montgomery No. 16987, 1999 WL 129469, *6 (Mar. 12, 1999)
- State v. Baker, 2016-Ohio-315, 58 N.E.3d 498, ¶ 21 (2d Dist.)
- State v. Fazenbaker, Ohio Slip Opinion No. 2020-Ohio-6731, __ N.E.3d __, ¶ 7
- State v. Page, 2d Dist. Montgomery No. 26670, 2017-Ohio-568, ¶ 7
- State v. Sheppard, 2d Dist. Clark No. 2012-CA-27, 2013-Ohio-812, ¶ 51
- State v. Wilson, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶¶ 10, 12, 14
- State v. Thompkins, 78 Ohio St. 3d 380, 386-387, 678 N.E.2d 541 (1997)
- State v. Dennis, 79 Ohio St. 3d 421, 430, 683 N.E.2d 1096 (1997)
- State v. Eastley v. Volkman, 132 Ohio St. 3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19
- State v. Lawson, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997)
- State v. Martin, 20 Ohio App. 3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983)
- State v. McLoughlin, 2d Dist. Champaign No. 2017-CA-22, 2018-Ohio-2426, ¶ 8
- State v. Million, 2d Dist. Montgomery No. 24744, 2012-Ohio-1774, ¶ 23
- State v. Smith, 2d Dist. Montgomery No. 26217, 2015-Ohio-700, ¶ 10
- State v. Henderson, 161 Ohio St. 3d 285, 2020-Ohio-4784, 162 N.E.3d 776, ¶ 39
- State v. Hampton, 134 Ohio St. 3d 447, 2012-Ohio-5688, 983 N.E.2d 324, ¶ 15
- State v. Raber, 134 Ohio St. 3d 350, 2012-Ohio-5636, 982 N.E.2d 684, ¶ 20
- State ex rel. Dobson v. Handwork, 159 Ohio St. 3d 442, 2020-Ohio-1069, 151 N.E.3d 613, ¶ 16
- State v. Donley, 2017-Ohio-562, 85 N.E.3d 324, ¶ 103 (2d Dist.)
- State v. Hibbler, 2d Dist. Clark No. 2019-CA-19, 2019-Ohio-3689, ¶ 20