

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

STATE OF OHIO,	:	APPEAL NOS. C-100150
		C-100151
Plaintiff-Appellee,	:	TRIAL NOS. 09CRB-27327A
		09CRB-27327B
vs.	:	
CHRISTOPHER BLAIR,	:	<i>DECISION.</i>
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: December 23, 2010

John P. Curp, Cincinnati City Solicitor, *Ernest F. McAdams, Jr.*, City Prosecutor, and *Kenneth Baylen*, Assistant City Prosecutor, for Plaintiff-Appellee,

Rose Ann Fleming, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} Defendant-appellant, Christopher Blair, appeals two assault convictions under R.C. 2903.13(A). We find no merit in his three assignments of error, and we affirm the trial court’s judgments.

I. Facts

{¶2} Evidence presented at a bench trial showed that Blair and two of his friends, Kelvin Johnson and Justin Cain, were sitting at a table on the back patio at Arlin’s Bar. The two victims, Todd Allen Spears and Nathan William Shryock, and their friends were sitting at a nearby table. The groups at the two tables did not know each other.

{¶3} Spears testified that Blair had approached his table and confronted him and Shryock. Blair asked them to apologize for allegedly “talking trash” about Johnson. Spears attempted to calm Blair and explained that no one at their table was talking about Johnson.

{¶4} According to Spears, Blair then punched him in the right temple. He stated that while he did not see Blair strike him, no one else was nearby, and he had no doubt that Blair was the person who had struck him. He added that, after he was hit, he saw Blair hit Shryock in the face with his right hand.

{¶5} Shryock also testified that Blair had approached their table, had asked them to apologize, and had punched him and Spears in the head. Lauren Rader, Shryock’s wife, testified that she had been facing Blair as he approached the table, and that she had seen him hit Spears and Shryock.

{¶6} Rader called the police and made a report at the scene. Since Rader and her group did not know Blair or anyone else at his table, the report did not contain any

names. About three weeks later, the police showed Spears a photographic lineup. He identified Blair as the individual who had hit him and Shryock. He stated that he had no doubt as to who had punched him.

{¶7} Johnson testified that he, Blair, and Cain had been at the bar celebrating Cain's birthday. He stated that he had tripped over a bottle and had accidentally stumbled into Shryock. Shryock pushed him, and he responded by punching Shryock in the face. He claimed that Blair had already left the bar before the altercation with Shryock had occurred.

{¶8} Cain testified that he did not see Blair go up to any table or hit anyone. Blair testified that he never went up to any table or hit anyone. He was outside the bar before the altercation occurred, although he claimed that he had seen Shryock push Johnson.

II. Jurisdiction

{¶9} In his first assignment of error, Blair contends that the trial court erred by hearing the case. He argues that the court lacked jurisdiction to hear the charges because the complaints filed by Spears and Shryock, private citizens, were never assessed by a reviewing official as required by R.C. 2935.09. This assignment of error is not well taken.

A. Complaints Filed by Private Citizens

{¶10} To “cause the arrest or prosecution of a person charged with committing an offense,” a private citizen must comply with R.C. 2935.09(D).¹ The citizen “may file an affidavit charging the offense committed with a reviewing official for the purpose of

¹ R.C. 2935.09(B).

review to determine if a complaint should be filed by the prosecuting attorney[.]”² A “reviewing official” is a judge, a prosecuting attorney, or a magistrate.³

{¶11} The Ohio Supreme Court has held that R.C. 2935.09 must be read together with R.C. 2935.10.⁴ That statute permits the clerk of courts to issue a warrant or summons upon the filing of a misdemeanor complaint by a private citizen.⁵

{¶12} Blair contends that because a reviewing official as defined in the statute never looked over the complaints and affidavits, the municipal court lacked jurisdiction to hear the case. But Blair’s argument fails to make the distinction between subject-matter jurisdiction and personal jurisdiction.

B. Subject-Matter and Personal Jurisdiction

{¶13} Subject-matter jurisdiction goes to the power of a court to hear and decide the merits of a case.⁶ It relates not “to the rights of the parties, but to the power of the court.”⁷ A judgment imposed by a court without subject-matter jurisdiction is void.⁸ A party cannot waive subject-matter jurisdiction and may raise the issue at any time.⁹

{¶14} Personal jurisdiction, on the other hand, is a court’s “power to bring a person into its adjudicative process; jurisdiction over a defendant’s personal rights, rather than merely over property interests.”¹⁰ Personal jurisdiction, unlike subject-

² R.C. 2935.09(D).

³ R.C. 2935.09(A).

⁴ *State ex rel. Boylen v. Harmon*, 107 Ohio St.3d 370, 2006-Ohio-7, 839 N.E.2d 934, ¶6.

⁵ R.C. 2935.10(B).

⁶ *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶11; *Mayfield Hts. v. N.K.*, 8th Dist. No. 93166, 2010-Ohio-909, ¶19; *Estate of Hodary v. Chancey* (Dec. 17, 1999), 1st Dist. No. C-980896.

⁷ *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998-Ohio-275, 701 N.E.2d 1002, quoting *Executors of Long’s Estate v. State* (1926), 21 Ohio App. 412, 415, 153 N.E. 225. (Emphasis omitted.)

⁸ *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, ¶12; *Pratts*, supra, at ¶12.

⁹ *Pratts*, supra, at ¶11; *Mayfield Hts.*, supra, at ¶19; *State v. Wilson* (May 11, 1994), 1st Dist. No. C-930429.

¹⁰ *Renacci v. Evans*, 9th Dist. No. 09CA0004-M, 2009-Ohio-5154, ¶6; *In re C.M.*, 10th Dist. No. 07AP-933, 2008-Ohio-2977, ¶18, both quoting Black’s Law Dictionary (8 Ed.2004), 870.

matter jurisdiction, can be waived.¹¹ A defendant waives any objection to a court's jurisdiction over his person by voluntarily submitting to the trial court's jurisdiction at an initial appearance, or by entering a plea of not guilty.¹²

C. Jurisdiction of the Municipal Court in this Case

{¶15} The Hamilton County Municipal Court has jurisdiction over misdemeanors committed within its territorial jurisdiction.¹³ The filing of a complaint invokes the court's jurisdiction.¹⁴ Under Crim.R. 3, a complaint is a written statement of the essential facts constituting the offense charged. The rule also requires the complaint to state the numerical designation of the applicable statute or ordinance and to be made upon oath before any person authorized by law to administer oaths.¹⁵

{¶16} On their face, the two complaints filed in this case were valid under Crim.R. 3. Each complaint was signed by one of the victims and was sworn before a notary public who was authorized to administer oaths. Each complaint also alleged that Blair had knowingly caused physical harm to the victim in violation of R.C. 2903.13. Thus, Blair was charged with two misdemeanor offenses committed within Hamilton County, and the court had subject-matter jurisdiction.¹⁶

{¶17} The court also acquired personal jurisdiction over Blair when he entered his not-guilty pleas. He now argues that the affidavits signed by the complaining witnesses were not reviewed by the appropriate official and were, therefore, invalid and contrary to law. But he never raised that issue in the trial court. Crim.R. 12(C) requires

¹¹ *State v. Smith*, 7th Dist. No. 05 MA 219, 2007-Ohio-3182, ¶21; *Estate of Hodary*, supra. See, also, *State v. Holbert* (1974), 38 Ohio St.2d 113, 118, 311 N.E.2d 22.

¹² *Holbert*, supra, at 118; *State v. Jones* (1991), 76 Ohio App.3d 604, 606, 602 N.E.2d 751.

¹³ R.C. 1901.20; *Jones*, supra, at 606.

¹⁴ *Zanesville v. Rouse*, 126 Ohio St.3d 1, 2010-Ohio-2218, 929 N.E.2d 1044, ¶5.

¹⁵ *Willowick v. Sanvido*, 11th Dist. No. 2009-L-097, 2010-Ohio-2816, ¶18-19; *State v. Richardson* (Dec. 17, 1986), 1st Dist. No. C-860121.

¹⁶ See *State v. Sunycalb* (Nov. 20, 1995), 12th Dist. No. CA95-04-059.

that objections based on defects in the institution of the prosecution be raised before trial.¹⁷ Because Blair failed to raise the issue, he waived it.

{¶18} Because Blair failed to raise the issue, and because nothing in the record indicates any deficiency in the complaints, we cannot look behind the complaints. The trial court's jurisdiction was properly invoked, and, consequently, we overrule Blair's first assignment of error.

III. Ineffective Assistance of Counsel

{¶19} In his second assignment of error, Blair contends that he was denied the effective assistance of counsel. He argues that counsel's performance was deficient for failing to file a motion to suppress pretrial-identification evidence. This assignment of error is not well taken.

{¶20} A court will presume that a properly licensed attorney is competent, and the defendant bears the burden to show ineffective assistance of counsel.¹⁸ To sustain a claim for ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient, and that the deficient performance prejudiced the defense.¹⁹

{¶21} Counsel's failure to prosecute a motion to suppress is prejudicial only if the defendant would have had a reasonable probability of success on that motion.²⁰ Nothing in the record shows that the pretrial identification procedures were unnecessarily suggestive or that the identification was unreliable under the

¹⁷ *State v. Pasqualone*, 121 Ohio St.3d 186, 2009-Ohio-315, 903 N.E.2d 270, ¶40.

¹⁸ *State v. Hamblin* (1988), 37 Ohio St.3d 153, 155-156, 524 N.E.2d 476; *State v. McCrary*, 1st Dist. No. C-080860, 2009-Ohio-4390, ¶12.

¹⁹ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *McCrary*, supra, at ¶12.

²⁰ *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶65; *McCrary*, supra, at ¶13.

circumstances.²¹ Consequently, Blair would not have had a reasonable probability of success on a motion to suppress, and counsel was not ineffective for failing to file one.

{¶22} Blair has not demonstrated that counsel's representation fell below an objective standard of reasonableness, or that, but for counsel's unprofessional errors, the result of the proceeding would have been otherwise. Therefore, he has failed to meet his burden to show ineffective assistance of counsel,²² and we overrule his second assignment of error.

IV. Weight and Sufficiency

{¶23} In his third assignment of error, Blair contends that the evidence was insufficient to support his convictions. Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found beyond a reasonable doubt that the state had proved all the elements of assault under R.C. 2303.13(A) in regard to each victim. Therefore, the evidence was sufficient to support the convictions.²³ Blair primarily argues that the testimony of the state's witnesses was inconsistent and not credible, but matters as to the credibility of evidence were for the trier of fact to decide.²⁴

{¶24} Blair also contends that his convictions were against the manifest weight of the evidence. After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse Blair's convictions and order a new trial. Therefore, the convictions were not against the

²¹ See *State v. Waddy* (1992), 63 Ohio St.3d 424, 438-439, 588 N.E.2d 819; *State v. Smith*, 1st Dist. Nos. C-080712 and C-090505, 2009-Ohio-6932, ¶16; *State v. Bell*, 1st Dist. No. C-030726, 2004-Ohio-3621, ¶16.

²² See *Strickland*, supra, at 687-689; *State v. Hirsch* (1998), 129 Ohio App.3d 294, 314-315, 717 N.E.2d 789.

²³ *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Glenn*, 1st Dist. No. C-030356, 2004-Ohio-1489, ¶22.

²⁴ *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116; *State v. Lukacs*, 1st Dist. Nos. C-090309 and C-090310, 2010-Ohio-2364, ¶59.

manifest weight of the evidence.²⁵ We overrule Blair's third assignment of error and affirm his convictions.

Judgments affirmed.

CUNNINGHAM, P.J., and **HENDON, J.**, concur.

Please Note:

The court has recorded its own entry this date.

²⁵ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541; *Glenn*, supra, at ¶32.