

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMES L. CHATFIELD

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 09-CA-11

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Perry County Court of
Common Pleas, Case Nos. 08CR0050 and
09CR0003

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 26, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOSEPH A. FLAUTT
PROSECUTING ATTORNEY
111 North High Street
P.O. Box 569
New Lexington, OH 43764

DEBORAH N. LAMNECK
Gottlieb, Johnston, Beam &
Dal Ponte, P.L.L.
320 Main St., P.O. Box 190
Zanesville, OH 43702-0190

Hoffman, P.J.

{¶1} Defendant-appellant James L. Chatfield appeals his convictions and sentence entered by the Perry County Court of Common Pleas, on six counts of breaking and entering, in violation of R.C. 2911.13(A); five counts of theft, in violation of R.C. 2913.02(A)(1), and one count of attempted theft of violation of R.C. 2923.02(A), following a jury trial. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On June 25, 2008, the Perry County Grand Jury indicted Appellant in Case No. 08CR0050 on five counts of breaking and entering, four counts of theft, and one count of attempted theft. A warrant was issued for Appellant's arrest. It appears from the docket, Appellant was arrested sometime in December, 2008, or early January, 2009. Appellant appeared before the trial court for arraignment on January 26, 2009, and entered a plea of not guilty to the charges contained in the Indictment. The trial court subsequently found Appellant indigent and appointed counsel for him.

{¶3} On January 27, 2009, the Perry County Grand Jury issued a second Indictment against Appellant in Case No. 09CR0003. The Indictment charged one count of breaking and entering, and one count of theft. Both charges arose from an incident which occurred on or about November 2, 2008. Appellant appeared for arraignment in Case No. 09CR0003 on February 4, 2009, and entered a plea of not guilty to the Indictment.

{¶4} The trial court scheduled Case No. 08CR0050 for trial on April 14, 2009. The trial court scheduled the jury trial in Case No. 09CR0003 for April 29, 2009. Appellant filed a Motion for Continuance in Case No. 08CR0050 on April 10, 2009. The

trial court rescheduled the jury trial in Case No. 08CR0050 for April 28, 2009. Prior to the commencement of trial on April 28, 2009, defense counsel made an oral motion for continuance, advising the trial court he needed additional time to obtain police reports relative to a stolen vehicle which was allegedly used during the commission of some of the offenses. The trial court denied the request and commenced voir dire.

{¶15} The following evidence was adduced at trial.

{¶16} Deputy Daniel P. Corder with the Perry County Sheriff's Office testified he was dispatched to a business known as Tourcon on November 27, 2007, on an "alarm drop". When Deputy Corder arrived, deputies from the Licking County Sheriff's Office; Steve Dearlove, the owner; and Paul Brown, the owner of the building complex, were already at the scene. The deputy explained the offender had smashed open the front door of the business, but did not find the object which had been used to gain entrance. Deputy Corder was unable to lift any fingerprints at the scene. He was advised Paul Brown had observed a white Ford Explorer exiting the parking lot.

{¶17} John Gillogly, the owner of Coop's Corner, testified his store was broken into on October 14, 2007. Despite numerous security measures, the offender was able to gain access into the store by throwing a heavy block through glass windows which had been framed in with two-by-fours. The phone wires at the business had been cut. The offender also cut the locks of a gate securing cigarette cartons. Approximately \$2,600.00 worth of cigarettes were stolen. Gillogly was able to provide law enforcement officers with a surveillance video taken that evening. The video depicted the offender, who entered the business with a large trash can, proceed behind the checkout counter, cut the locks on the security gate, and fill the trash can with cartons of

cigarettes. The offender left the store after approximately three minutes. The exterior security camera caught the vehicle driving out of the parking lot and travel toward the interstate.

{¶18} Deputy Lee Hawks, who was an investigator with the Perry County Sheriff's Office in 2006, and 2007, testified he was dispatched to Coop's Corner on October 14, 2007. One of the first shift employees had telephoned the Sheriff's Office regarding a break-in. Officer Hawks conducted a security sweep of the store as well as a preliminary look for evidence. The officer found a window on the southwest corner of the building had been completely smashed out, leaving shattered glass and pieces of plywood on the floor of the store under the window. Officer Hawks testified the padlocks, which secured the cage over the cigarettes, had been cut. Part of a concrete bench which was located outside the business had been used to smash through the glass window. Jeff Cook, a crime scene technician with BCI, came to the scene to assist Officer Hawks in processing the scene. Numerous footwear impressions were taken from the scene, all having the same tread wear pattern.

{¶19} Deputy Hawks detailed the evidence compiled. Surveillance video was forwarded to evidence technicians at the Attorney General's Office for enhancement of the imagery. Still photographs of the suspect were made from the surveillance video. The photographs depicted a white male with dark hair and a beard, wearing a flannel jacket, and dumping cartons of cigarettes into a trash can. Surveillance video was subsequently obtained from Lake's End, a business adjacent to Tri-County Plumbing, which had also been broken into during the same time period. The surveillance video showed a white Ford Explorer traveling onto the Tri-County Plumbing parking lot, and

leaving a short time later. The date and time feature of the surveillance video revealed the vehicle was in the parking lot at the same time the alarm went off at Tri-County. Deputy Hawks testified Pataskala police officers apprehended the driver and passenger of a vehicle matching the description of the white Ford Explorer on November 30, 2007. The driver was identified as Appellant, and the passenger was identified as Christopher Carter. A Rubbermaid trashcan, a large rock, and a plaid flannel jacket were found in the vehicle.

{¶10} Steve Dearlove, the owner of Tourcon, a rental business and supplier of Stihl products, testified the business was subject to three break-ins in November, 2007. Dearlove identified photographs of his business following each of the break-ins. He stated approximately ten saws and three or four blowers were taken during the first break-in. During the second break-in, \$3,000 worth of saws, a weed eater, a drill and a generator were stolen. After the second break-in, Dearlove took extra precautions, using cables and wires to tie down the merchandise. No merchandise was stolen during the third break-in. During each break-in, the offender used rocks to gain access into the business.

{¶11} Paul Brown testified he owns the strip mall in which Tourcon was located in November, 2007. Brown explained the strip mall is located in front of his house. Brown recalled the business had been broken into three times. Brown heard the alarm go off each time, and immediately proceeded to the building where he found the front door of the business smashed open with a rock. On the third occasion, when Brown was coming around the corner of the building, he observed a vehicle travel onto the road in front of the building and onto Route 13 at a high rate of speed. On cross-

examination, Brown acknowledged he was not able to get the license plate number from the vehicle, which he described as a white Ford SUV. Brown noted there were no other vehicles on the roadway at the time.

{¶12} Dave Bennett, the owner of Tri-County Plumbing, testified he received a call from the alarm company on November 27, 2007, alerting him his business had been broken into. Bennett was at home at the time, and immediately proceeded to his business. The first thing he noticed was the glass on the front door had been shattered and there was a large rock laying inside. Bennett noted his business is adjacent to the Lake's End.

{¶13} Steve Dornon, the owner of Lake's End, testified he provided sheriff's deputies with a surveillance video taken from the exterior security cameras of his business on November 27, 2007, the evening on which Tri-County Plumbing was broken into for a third time. Dornon further testified Lake's End was subsequently broken into in November, 2008. At approximately 11:30pm on November 2, 2008, the security system called him at home to advise him the alarm at the business had been set off. Dornon contacted the Sheriff's Office using his cell phone as he drove to Lake's End. When he arrived at the business, the alarm was going off. He observed a large rock, which had been thrown through the door, shattering the glass. He recalled the business had been ransacked, and merchandise and cash totaling almost \$4,000, had been taken. Dornon had a surveillance system consisting of 13 cameras inside and outside the business which he reviewed that evening. The surveillance video revealed three individuals entering the business. Photographs taken from the video captured the suspect vehicle, an individual throwing a rock through the door, an individual at the

checkout counter with shattered glass littering the floor, and the individuals removing merchandise.

{¶14} Christopher Carter, who was incarcerated at Pickaway Correctional Institution as punishment for four breaking and entering convictions and four theft convictions out of Perry County, testified he and Appellant committed three breaking and enterings at Tourcon and one at Tri-County Plumbing in November, 2007. Carter stated on the first occasion, he and Appellant drove to Perry County in a blue Pontiac. They traveled past Tourcon and turned around in the parking lot of Coop's Corner. Carter mentioned breaking into Coop's Corner instead of Tourcon, but Appellant told him he (Appellant) had already broken into that business and knew it would not be possible to break back into the business. The two men traveled back to Tourcon. Carter recalled Appellant threw a rock and shattered the glass door. The two proceeded inside, taking chainsaws, Carhartt clothing, and other merchandise. They returned to Columbus and sold the items to different people. When Carter and Appellant traveled to Tourcon the second time, they drove in a black SUV type of vehicle which they had stolen from Carter's friend. Again, Appellant gained access to the business by throwing a rock through the door. Carter and Appellant stole chainsaws and other equipment, which they subsequently sold. Carter noted the first two break-ins occurred within days of each other.

{¶15} On the third occasion, Carter and Appellant traveled to Tourcon in a white Ford Explorer. Appellant threw a rock through a glass door. The two men went inside, and attempted to grab chainsaws, however, the merchandise had been fastened down. From there, Carter and Appellant traveled to Tri-County Plumbing, which was located

one block away from Tourcon. Appellant utilized the same means of entrance, throwing a rock through the glass door. Once inside, Appellant and Carter took a generator and other merchandise. Carter stated he and Appellant were caught a few days later in Licking County. Carter was able to identify the flannel coat Appellant wore during all of the break-ins. On cross-examination, Carter acknowledged he had entered into a plea bargain with the State in exchange for his testimony against Appellant.

{¶16} Jeffrey Cook, a special agent with the Bureau of Criminal Investigation and Identification, testified he was summoned to Perry County in regard to a breaking and entering which occurred at Coop's Corner on October 14, 2007. Deputy Lee Hawks was on the scene when Cook arrived. They conducted an initial walk-through of the business. Hawks showed Cook the surveillance video which had been taken during the break-in. Because the intruder appeared to be wearing gloves, the two officers decided not to dust for fingerprints. Instead, Cook focused on finding footwear impressions. Cook located a footwear impression on a padded mat on the floor behind the checkout counter. Cook photographed the impression and also lifted the impression using an epoxy silicone material.

{¶17} Ted Manasian, a forensic scientist in the Trace Evidence Unit of the Bureau of Criminal Identification and Investigation, testified he examined a pair of brown boots, which were the suspected footwear of Appellant, and compared them to the footwear impression taken by Jeffrey Cook. During his examination of the boots, Manasian recovered glass fragments embedded in the tread of the sole. Manasian had also been provided with glass pieces recovered from the scene which he examined for the presence of footwear impressions. In looking at all of the questioned impressions,

silicone casts, glass pieces as well as the photographs from the crime scene, Manasian found two of the impressions to be the same tread design and size as the left boot submitted from Appellant. Four of the impressions were found to be the same tread size and design as the right boot from Appellant. Manasian could not say to the exclusion of any other boot Appellant's boots made the impressions. He noted he was unable to find any identifying characteristics.

{¶18} Sergeant Kevin Starrett, an investigator with the Perry County Sheriff's Office, testified he investigated a breaking and entering which occurred at Lake's End on November 2, 2008. When he arrived at the scene, the first thing he noticed was the glass of the front door had been shattered. A large rock was found approximately fifty feet inside, underneath a clothing rack. Sgt. Starrett and Scott Dornon reviewed the video from the surveillance cameras of the business. Dornon made a copy of the security video for the police. Sgt. Starrett noted pictures had been printed from the security surveillance footage. One picture depicted a white male entering through the front door of the business, who was subsequently identified as Appellant. Other photographs depicted Appellant and an accomplice, walking through the front door, and Appellant collecting Carhartt clothing. Deputy Starrett played the surveillance video taken from six different camera views at Lake's End, which revealed Appellant loading items into the back of a vehicle, entering the vehicle, and driving away.

{¶19} Jennifer Metz, a forensic scientist with the Ohio Bureau of Criminal Identification and Investigation, testified she examined seven different latent fingerprints she received from the Perry County Sheriff's Office on November 12, 2008. Of the

seven prints, Metz found one sufficient print, however, she was unable to determine to whom the print belonged. She could not identify the print as belonging to Appellant.

{¶20} Appellant called Sean Gray. Gray testified he was the owner of a Chevrolet HHR which had been stolen sometime in November, 2007. Gray stated he recovered the vehicle on either November 21, or 22, 2007.

{¶21} After hearing all the evidence and deliberating, the jury found Appellant guilty of all of the counts contained in both Indictments. The trial court ordered a pre-sentence investigation. Appellant was ultimately sentenced to a prison term of eighty-two months and ordered to pay restitution.

{¶22} It is from this convictions and sentence Appellant appeals, raising the following the assignments of error:

{¶23} “I. THE TRIAL COURT ERRED WHEN IT REFUSED TO GRANT A CONTINUANCE WHICH DEPRIVED THE APPELLANT DUE PROCESS AND THE EFFECTIVE ASSISTANCE OF COUNSEL.

{¶24} “II. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S MOTION FOR A MISTRIAL DUE TO OTHER EVIDENCE PRESENTED.”

I

{¶25} In his first assignment of error, Appellant contends the trial court erred in refusing to grant a continuance of his trial as such deprived him of due process and the effective assistance of counsel.

{¶26} The decision whether to grant or deny a continuance is within the sound discretion of the trial court and should not be reversed on appeal absent an abuse of that discretion. *State v. Unger* (1981), 67 Ohio St.2d 65, 67, 423 N.E.2d 1078. An abuse

of discretion connotes more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. "Whether the court has abused its discretion depends upon the circumstances, 'particularly * * * the reasons presented to the trial judge at the time the request is denied.' " *State v. Powell* (1990), 49 Ohio St.3d 255, 259, 552 N.E.2d 191, quoting *Ungar v. Sarafite* (1964), 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921.

{¶27} In determining whether a trial court abused its discretion in denying a motion for a continuance, an appellate court should consider the following factors: (1) the length of the delay requested; (2) whether other continuances have been requested and received; (3) the inconvenience to witnesses, opposing counsel and the court; (4) whether there is a legitimate reason for the continuance, (5) whether the defendant contributed to the circumstances giving rise to the need for the continuance, and other relevant factors, depending on the unique facts of each case. See: *State v. Unger*, supra; *State v. Holmes* (1987), 36 Ohio App.3d 44, 521 N.E.2d 479.

{¶28} Defense counsel filed a motion for continuance on April 10, 2009, four days before the original trial date. The trial court granted the motion and rescheduled the trial for April 28, 2009. On the morning of trial defense counsel again asked for a continuance, stating he needed additional time to locate the police report of a stolen white Ford SUV, which had been used during the commission of some of the break-ins. He explained the date on which the vehicle was stolen was crucial to Appellant's defense as Carter had given inconsistent statements about what type of vehicle was used on which date.

{¶29} We find the trial court did not abuse its discretion in denying Appellant's request for a continuance. The trial court's failure to provide Appellant with additional time in which to find the police report did not prejudice Appellant. Christopher Carter testified he and Appellant drove to Tourcon for the third time in a white Ford SUV, which he (Carter) had stolen. The surveillance video taken by the exterior security system at Lake's End depicts the subject vehicle leaving the area on the date of the break-in at Tri-County Plumbing. David Brown testified he observed a white Ford SUV pulling out of the Tourcon parking lot following the third break-in at the business. Furthermore, a continuance would have inconvenienced a number of witnesses. The State had nine witnesses scheduled to testify on the first day of trial, and an additional seven on the second day of trial.

{¶30} Appellant's first assignment of error is overruled.

II

{¶31} In his second assignment of error, Appellant contends the trial court erred in denying his motion for mistrial due to the State's improperly eliciting testimony from Deputy Hawks regarding evidence of other bad acts by Appellant.

{¶32} The grant or denial of a mistrial rests within the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, 182, 510 N.E.2d 343. Moreover, mistrials need be declared only when the ends of justice so require and a fair trial is no longer possible. *State v. Franklin* (1991), 62 Ohio St.3d 118, 580 N.E.2d 1. "An appellate court will not disturb the exercise of that discretion absent a showing that the accused has suffered material prejudice." *Sage*, supra at 182, 510 N.E.2d 343.

{¶33} As a general rule, evidence of previous or subsequent acts, wholly independent of the charges for which the accused is on trial, is inadmissible. *State v. Hector* (1969), 19 Ohio St.2d 167, 249 N.E.2d 912. Such evidence cannot be admitted for the purpose of establishing the defendant acted in conformity with this bad behavior. *State v. Elliot* (1993), 91 Ohio App.3d 763, 633 N.E.2d 1144.

{¶34} Ohio Rule of Evidence 404(B) reads:

{¶35} “(B) Other crimes, wrongs or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

{¶36} R.C. 2945.59 provides:

{¶37} “In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.”

{¶38} Other acts evidence demonstrating a modus operandi, scheme, plan or system evincing a “behavioral fingerprint” is limited to the purpose of establishing the perpetrator's identity. See, *State v. Jamison* (1990), 49 Ohio Sst.3d 182, 183; *State v.*

Smith (1990), 49 Ohio St.3d 137, 141, 551 N.E.2d 190; *State v. Coleman* (1988), 37 Ohio St.3d 286, 525 N.E.2d 792.

{¶39} During the State's direct examination of Deputy Hawks, the prosecutor asked the officer about an incident in Clark County. Defense counsel objected. The trial court sustained the objection. On cross-examination, counsel for Appellant questioned the deputy regarding a meeting he had with the Chief of Police of South Vienna, Clark County. Defense counsel continued: "And Mr. Chatfield's supposedly charged in Clark County as well. Did you know that?" April 28, 2009 Transcript, Vol. I at 222. Deputy Hawk replied: "As far as I know. I don't know the status of that particular case." Id. Thereafter, on re-direct, Deputy Hawks explained the purpose of the meeting with the South Vienna Chief of Police was to compare notes as the incident in Clark County involved the same vehicle and the same offenders. On re-cross, defense counsel asked the deputy about the outcome of the Clark County case. Deputy Hawks noted he had not been called to testify in that case and did not know the outcome of the matter. Upon completion of re-cross, defense counsel approached the bench and advised the trial court Appellant wanted him to object to the testimony regarding Clark County. The trial court overruled the objection as untimely and found the evidence was probative of a modus operandi.

{¶40} Because Appellant failed to timely object to the evidence and, in fact, opened the door to the line of questioning, he has waived all but plain error. *State v. McKnight*, 1007 Ohio St.3d 101, 2005-Ohio-6046 at ¶ 185. Pursuant to Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Notice of plain error is to be taken with the

utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Cooperrider* (1983), 4 Ohio St.3d 226, 448 N.E.2d 452. An alleged error does not constitute plain error unless, but for the error, the outcome of the trial clearly would have been otherwise. *State v. Stojetz*, 84 Ohio St.3d 452, 455, 705 N.E.2d 329, 1999-Ohio-464. The burden of demonstrating plain error is on the party asserting it. Given the overwhelming evidence of Appellant's guilt, we find he is unable to establish the outcome of his trial would have been different but for the other acts evidence.

{¶41} Appellant's second assignment of error is overruled.

{¶42} The judgment of the Perry County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

