

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

State of Ohio

Court of Appeals No. L-13-1023

Appellee

Trial Court No. CR0201202926

v.

William Hiatt-Tanner

DECISION AND JUDGMENT

Appellant

Decided: December 13, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

Laurel A. Kendall, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals his conviction for receiving stolen property, entered on a jury verdict in the Lucas County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} In 2012, Ashlea Lacourse shared a Toledo house with her friend, Molly. On the evening of July 24, Ashlea returned home from work and placed her purse on a table in a common area. When she awoke the next morning, she discovered that her wallet and its contents were missing from her purse. The wallet contained some money and two debit/credit cards.

{¶ 3} Ashlea went online to her bank's website and discovered that, beginning at 5:21 a.m. that morning, her bank debit card had been used or attempted to be used at four neighborhood convenience stores. Obtaining the location of the convenience stores through her bank, Ashlea went to the stores to inquire about the charges. One of the stores permitted Ashlea to view security video recordings at the time her card was used.

{¶ 4} On viewing the security recording, Ashlea recognized a male visitor who had accompanied her roommate, Molly, to the house on a few occasions. The male was eventually identified as appellant, William J. Hiatt-Tanner. Ashlea filed a police report and provided police with the information she had accumulated.

{¶ 5} Appellant was arrested in September 2012, and named in a three count indictment. Appellant pled not guilty to all counts. In January 2013, the matter proceeded to a trial before a jury on charges of theft and receiving stolen property, fifth degree felonies. The third count of forgery was dismissed at the prosecution's request.

{¶ 6} At trial, Ashlea testified to the circumstance surrounding the loss of her debit cards and her efforts to find who had taken them. Police witnesses introduced

surveillance video from the convenience stores and evidence of the merchandise purchased and attempted to be purchased.

{¶ 7} Appellant testified in his own behalf. Appellant admitted to being at, but not in, Ashlea's house. This was at the invitation of Molly, whom he believed to be Ashlea. According to appellant, Molly, nee Ashlea, provided him with the debit cards and gave him permission to use them. Molly did not testify.

{¶ 8} In less than an hour, the jury found appellant guilty on both counts of the indictment. The trial court accepted the verdict. Following a presentence investigation, the court merged the two counts as allied offenses and sentenced appellant to an eleven month term of imprisonment for receiving stolen property. This appeal followed.

{¶ 9} Appellant sets forth a single assignment of error:

The trial court committed reversible error when it allowed state's witness Ashlea Lacourse to introduce inadmissible hearsay, by testifying to an out of court statement offered for its truth, which linked Appellant to the crime.

{¶ 10} At trial, during cross-examination of Ashlea Lacourse, appellant's counsel questioned the witness about the steps she had taken while investigating her missing wallet. The witness said she had spoken to her friend Charlotte, her mother and her boyfriend. Appellant's counsel then asked:

Q. Okay. Where is Molly?

A. I called her and she was at her friend Aubrey's house.

Q. Did you talk to Molly about this at all?

A. Yes, and she said that as far as she knew that William was not in the house but she went upstairs to go to the bathroom and change her clothes and that it was very possible that he came inside because the door was unlocked.

{¶ 11} On appeal, appellant maintains that the victim's recitation of what she was told by Molly was hearsay and should not have been admitted.

{¶ 12} "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Hearsay is not admissible in court unless permitted by an exception from the general rule by constitution, statute or rule. Evid.R. 802.

{¶ 13} The offending statement is hearsay and likely mildly prejudicial to appellant's assertion that he was never in the house. In that respect, an objection to the testimony and a motion to strike should have been viewed favorably by the trial court. Appellant made no such objection, which would ordinarily waive all but plain error. Crim.R. 52.

{¶ 14} More importantly, when prejudicial hearsay testimony arises during the defense's own cross-examination of the victim, any error in admitting such testimony is invited error. *State v. Hruby*, 6th Dist. Ottawa No. OT-04-026, 2005-Ohio-3863, ¶ 37, citing *State v. Ahmed*, 103 Ohio St.3d 27, 2004-Ohio-4190, 813 N.E.2d 637, ¶ 75. Pursuant to the invited error doctrine, a party may not take advantage of an error that the

party invited or induced. *Id.*; *State v. Bey*, 85 Ohio St.3d 487, 492-493, 709 N.E.2d 484 (1999).

{¶ 15} Since appellant elicited on cross-examination of the victim the testimony of which he now complains, he may not now seek to use admission of such testimony to his advantage on appeal. Appellant's sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
