[Cite as *State v. Chatman*, 2010-Ohio-4652.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C.A. No. 25278
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
GLEN CHATMAN	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 06 1886(B)

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Glen Chatman,[1] appeals from his convictions in the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On June 5, 2008, a security camera operator at the Dillard's store in Summit Mall contacted the security officers in the store to apprise them of a theft she had viewed on camera. Sergeant Robert Buza, a Fairlawn Police Department Officer who worked part-time for Dillard's, reported to the store to search for a black male wearing glasses and a bright orange shirt. While searching the store, Sergeant Buza noticed another black male, later identified as Chatman, who

[1] The record contains several filings, documents, and testimony, which indicate that Appellant's name is actually Glen Chatmon, not Chatman. Nevertheless, the trial court's sentencing entry and both appellate briefs spell Appellant's last name "Chatman." This Court will employ the spelling set forth in the sentencing entry and the appellate briefs, but notes the discrepancy for purposes of the record.

was wearing a bright green shirt and talking on his cell phone. Sergeant Buza did not stop Chatman when he first saw him, but Sergeant Buza asked the security camera operator to review the security footage again. From the footage, the officers soon determined that Chatman and the black male in the orange shirt had been together in the store. The officers quickly expanded their search to the Dillard's parking lot and found Chatman and another man, Edward Adkins, in Chatman's car. The bright orange shirt that Adkins had been wearing was lying in the backseat of the car. Additionally, when Chatman consented to a search of his car, the police found numerous items from various stores, including a Louis Vitton purse, Dooney & Burke wallet, Lacoste tennis shoes, and William Rast jeans.

{¶3} On June 16, 2008, a grand jury indicted Chatman on one count of theft, in violation of R.C. 2913.02(A)(1). Subsequently, a supplemental indictment was issued, charging Chatman with: (1) three counts of receiving stolen property, in violation of R.C. 2913.51(A); and (2) criminal trespass, in violation of R.C. 2911.21(A)(3). Chatman pleaded guilty to criminal trespass, and the State tried the remaining counts to a jury on March 23, 2009. The jury found Chatman guilty of receiving stolen property and complicity to commit theft. The court sentenced Chatman on April 1, 2009, and Chatman filed a notice of appeal. This Court dismissed Chatman's appeal by way of journal entry due to an improper post-release control notification. See *State v. Chatman* (Nov. 10, 2009), 9th Dist. No. 24714. The trial court then conducted a de novo sentencing hearing and, on February 22, 1010, issued a new sentencing entry. The trial court sentenced Chatman to twenty months in prison.

{¶4} Chatman now appeals from his convictions and raises four assignments of error for our review. For ease of analysis, we rearrange the assignments of error.

II

Assignment of Error Number Four

"THE TRIAL COURT ERRED IN DENYING THE CRIMINAL RULE 29 MOTION FOR ACQUITTAL."

{¶5} In his fourth assignment of error, Chatman argues that his convictions are based on insufficient evidence. We disagree.

{¶6} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." Id. at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

"In essence, sufficiency is a test of adequacy." *Thompkins*, 78 Ohio St.3d at 386.

{¶7} R.C. 2913.02(A)(1) provides, in part, as follows:

> "No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services *** [w]ithout the consent of the owner or person authorized to give consent[.]"

"A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B). The theft of property valued at an amount between $500 or more and less than $5,000 is a fifth-degree felony. R.C 2913.02(B)(2). One who is complicit in the commission of a theft offense "shall be prosecuted and punished as if he were a principal offender." R.C. 2923.03(F). Accord

State v. Anderson, 9th Dist. No. 22845, 2006-Ohio-5048, at ¶28 ("A defendant may be convicted of the principal offense if it is established that the defendant acted in complicity with another.").

{¶8} R.C. 2913.51(A) provides that "[n]o person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense." The crime of receiving stolen property is a fifth-degree felony if the property received is valued at an amount between $500 or more and less than $5,000. R.C. 2913.51(C). If the value of the property is less than $500, it is a first-degree misdemeanor. Id.

{¶9} Chatman does not challenge any particular element of either of his convictions. He generally argues that "not all the elements of the charged crime have been proven" because Adkins admitted to stealing a purse.

{¶10} The jury found Chatman guilty of complicity to commit theft with regard to a Dooney & Burke purse and wallet from Dillard's. At trial, Sergeant Buza testified that shoplifters generally operate in pairs so that one person can distract the clerk at the sales register while the other takes an item. Security camera footage from Dillard's depicts Chatman and Adkins walking together into the designer purse and wallet section of the store. Each of them carry a large shopping bag. Chatman chooses a wallet and the two walk back toward the purses. At some point, Adkins acquires a zebra-striped Dooney & Burke purse. Chatman hands Adkins his large shopping bag and walks toward the register with the wallet he is holding. Adkins then quickly shifts the items in his hands so as to conceal the Dooney & Burke purse between the two large shopping bags. The video finally depicts Adkins leaving the store while Chatman remains.

{¶11} In the course of the police investigation surrounding the theft, the police located both the Dooney & Burke purse and a matching wallet. It is unclear from the record whether the

wallet Chatman carried around Dillard's in the video was the Dooney & Burke wallet or a different wallet. Nevertheless, Officer Gayleanne Ames testified that the police found a zebra-striped Dooney & Burke wallet in Chatman's car, tucked inside a Louis Vuitton purse. Officer Jeffrey Smith testified that he discovered the Dooney & Burke purse that Adkins took from the store shoved under a dumpster just outside one of the mall's exits. He also testified that the Dooney & Burke purse and wallet were valued at $325 and $185, respectively. Terri Manning, the assistant store manager at Dillard's, identified the Dooney & Burke purse and wallet the police recovered and confirmed that their UPC codes matched the codes of items taken from the store.

{¶12} Based on the foregoing, a rational trier of fact could have found that Chatman knowingly aided Adkins in the theft of a Dooney & Burke purse and wallet, which were valued at more than $500. Accordingly, Chatman's conviction for complicity to commit theft is not based on insufficient evidence.

{¶13} Chatman's remaining convictions for receiving stolen property are based on the receipt of a Louis Vuitton purse, a pair of Lacoste tennis shoes from Finish Line, and two pairs of William Rast jeans from Indigonation by National Jean Company ("Indigonation"). The police discovered all of the foregoing items in Chatman's car when they searched it. Chatman's sole argument is that there was no evidence he knew the items were stolen.

{¶14} "Circumstantial evidence and direct evidence inherently possess the same probative value." *State v. Smith* (Nov. 8, 2000), 9th Dist. No. 99CA007399, at *15, quoting *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus. There are numerous pieces of circumstantial evidence in the record that support Chatman's convictions. When the police discovered all of the foregoing items in Chatman's car, he initially stated that he had purchased

the items. Yet, he could not produce receipts and did not have any bags from the respective stores where he claimed to have purchased the items. The Lacoste tennis shoes were not in a box and still had a form inside them, which the manager from Finish Line indicated was a form that the store always removed after a purchase. The Louis Vuitton purse was lying on the floor of Chatman's car with the Dooney & Burke wallet tucked inside it. Moreover, the two pairs of William Rast jeans were inside an Abercrombie & Fitch shopping bag, which was the same bag that Chatman carried into Dillard's and handed to Adkins before he took the Dooney & Burke purse. Managers from Louis Vuitton, Finish Line, and Indigonation all testified that the items taken from Chatman's car matched items they were missing from their stores after they performed inventories. Taken together, the evidence supports the conclusion that Chatman knew he was receiving stolen property. Consequently, Chatman's fourth assignment of error is overruled.

Assignment of Error Number One

> "THE TRIAL COURT'S JUDGMENT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS NOT SUPPORTED BY THE EVIDENCE."

{¶15} In his first assignment of error, Chatman argues that his convictions for receiving stolen property and complicity to commit theft are against the manifest weight of the evidence. Specifically, he argues that the evidence showed that Adkins committed these crimes alone. We disagree.

{¶16} When considering a manifest weight argument, the Court:

> "[M]ust 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 trier 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." *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. Id. Therefore, this Court's "discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶17} Sergeant Buza testified that Chatman initially told him he had bought all of the items the police found in his car, despite the fact that: (1) none of the items he allegedly purchased were in boxes or bags from stores that sold those items; and (2) Adkins admitted, when questioned separately, that he had stolen the Dooney & Burke wallet. After Chatman was unable to produce receipts for all of the items, he indicated that some of the items were counterfeit items, which he bought in New York and sold in Ohio for profit. Yet, managers from Louis Vuitton, Finish Line, and Indigonation all offered testimony from which one could conclude that the items were from their respective stores. They all matched the items in Chatman's car to inventory their stores were missing. The Louis Vuitton manager verified that the purse from Chatman's car was an authentic Louis Vuitton. The manager from Finish Line recognized the handwriting of one of her assistants on a form inside the Lacoste tennis shoes. Additionally, the Indigonation manager recognized Chatman as a frequent visitor to the store. She indicated that Indigonation is the only store in the area that sells William Rast jeans and that the store never registered Chatman as a purchaser of the jeans he had in the Abercrombie & Fitch bag in his car. Moreover, the security camera footage from Dillard's clearly depicts Chatman

carrying the Abercrombie & Fitch bag the police later found in his car into the Dillard's store and handing it to Adkins, who used it to commit a theft. Based on our review of the record, we cannot conclude that the jury lost its way in convicting Chatman of complicity to commit theft and receiving stolen property. Chatman's first assignment of error is overruled.

Assignment of Error Number Three

"THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN ADMITTING CERTAIN EVIDENCE."

{¶18} In his third assignment of error, Chatman argues that the trial court abused its discretion by admitting irrelevant and highly prejudicial evidence. Specifically, he argues that the court erred by allowing the State to reference receipts and items collected from Chatman's car that did not relate to a specific charge in Chatman's indictment. The record reflects that Chatman did not contemporaneously object to the admission of these items at trial. Although Chatman filed a motion in limine, a motion in limine does not preserve an alleged error for appeal. *State v. Kleinfeld*, 9th Dist. No. 24736, 2010-Ohio-1372, at ¶8-9. Because Chatman did not properly object in the court below, he is limited to a claim of plain error on appeal. Id. at ¶10. Chatman, however, has not argued plain error. "[T]his [C]ourt will not sua sponte undertake a plain-error analysis if a defendant fails to do so." Id., quoting *Akron v. Lewis*, 9th Dist. No. 24236, 2008-Ohio-6256, at ¶22. Therefore, Chatman's third assignment of error is overruled.

Assignment of Error Number Two

"THE APPELLANT'S CONVICTION MUST BE OVERTURNED IN THAT HE WAS NOT PROVIDED WITH COMPETENT TRIAL COUNSEL."

{¶19} In his second assignment of error, Chatman argues that his trial counsel was ineffective. Specifically, he argues that his counsel was ineffective because he failed to object to

hearsay evidence and he permitted the jury to review an exhibit from which damaging evidence had not been excised. We disagree.

{¶20} To prove an ineffective assistance claim, Chatman must show two things: (1) that counsel's performance was deficient to the extent that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and (2) that "the deficient performance prejudiced the defense." *Strickland v. Washington* (1984), 466 U.S. 668, 687. To demonstrate prejudice, Chatman must prove that "there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph three of the syllabus. "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. Furthermore, this Court need not address both *Strickland* prongs if an appellant fails to prove either one. *State v. Ray*, 9th Dist. No. 22459, 2005-Ohio-4941, at ¶10.

{¶21} Chatman argues that his trial counsel was ineffective because he did not object to several instances of hearsay evidence. This Court has repeatedly held that a "trial counsel's failure to make objections is within the realm of trial tactics and does not establish ineffective assistance of counsel." *State v. Evans*, 9th Dist. No. 23649, 2007-Ohio-5934, at ¶27, quoting *State v. Taylor*, 9th Dist. No. 01CA007945, 2002-Ohio-6992, at ¶76. Moreover, it is unclear how trial counsel's actions prejudiced Chatman in this case. Chatman alleges that his counsel should have objected each time one of the store managers testified that one of their employees told them an item had been stolen. Yet, that testimony was superfluous. The managers had personal knowledge that the items at issue matched items that were missing from their stores when they conducted inventories. The State introduced security camera footage from which one

could ascertain that Chatman aided Adkins in the commission of a theft. Moreover, Chatman had numerous items from various stores in his car. Chatman did not have matching shopping bags or boxes for these items, did not have receipts, and claimed to have purchased at least one of the items even though Adkins admitted to stealing it. The record does not support Chatman's contention that his counsel's failure to object prejudiced him. Accordingly, his argument lacks merit.

{¶22} Chatman also argues his counsel was ineffective because he permitted the police to testify about certain items in Chatman's car even though the State did not charge him with respect to those items. Again, it is unclear how this testimony prejudiced Chatman. Sergeant Buza testified as to all of the items that the police found in Chatman's car after they conducted an inventory. Apart from the items at issue in this case, Chatman also had numerous pairs of designer sunglasses in his car. Sergeant Buza specifically testified that Chatman was not charged with regard to any of the sunglasses because there was no proof that they were stolen. Chatman has not demonstrated how testimony that he did not steal the sunglasses in his car prejudiced him at trial. See App.R. 16(A)(7). Accordingly, his counsel was not ineffective for allowing this testimony. See *Strickland*, 466 U.S. at 691.

{¶23} Finally, Chatman argues his counsel was ineffective because he should not have allowed the State's Exhibit 4 to be submitted to the jury. Exhibit 4 is an internal incident report from Louis Vuitton, documenting the theft of one of its items. Both the prosecutor and defense counsel agreed to admit Exhibit 4 at trial with the stipulation that the "Brief Summary of Incident" section of the report be redacted. Before submitting the exhibit to the jury, someone used a black marker to black out that section of the report. Chatman acknowledges that the section is blacked out, but argues that it is still legible and its content prejudiced him. This Court

will not presume that the jury could actually read the redacted portion of Exhibit 4. Chatman also offers no analysis or law as to why the content of the redacted portion would have been prejudicial to him. See App.R. 16(A)(7). As we have repeatedly held, "[i]f an argument exists that can support [an] assignment of error, it is not this [C]ourt's duty to root it out." *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, at *8. Chatman's second assignment of error lacks merit.

III

{¶24} Chatman's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

THOMAS C. LOEPP, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.