

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

STATE OF OHIO,	:	APPEAL NO. C-061034
	:	TRIAL NO. B-0607098
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CALVIN HALL,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Following a jury trial, defendant-appellant Calvin Hall was found guilty of burglary,<sup>2</sup> a third-degree felony, and sentenced to a three-year prison term. He was acquitted of intimidation of a crime victim or witness.<sup>3</sup> In this appeal, Hall brings forth three assignments of error, arguing that his conviction violated due process because of improper testimony, prosecutorial misconduct, and juror misconduct. We disagree and therefore affirm the judgment of the trial court.

On July 23, 2006, while Hall was driving Leah Dalton from Mason, Ohio, to the Dayton, Ohio, airport, Dalton's apartment, located at 12132 Sycamore Terrace, was burglarized. She reported that \$900 had been taken from the oven, where she kept her cash, and that other personal items, such as jewelry, two laptop computers

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> R.C. 2911.12(A)(3).

<sup>3</sup> R.C. 2921.04(B).

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and purses, had also been stolen. The state presented testimony at trial demonstrating that Hall, by using text messaging, had directed an accomplice to burglarize Dalton's apartment while he was driving her to the airport.

At trial, Dalton testified that she and Hall had been friends for eight months, and that he had often visited her in her apartment. On the morning of July 23, 2006, she arranged for Hall to drive her to the Dayton airport to pick up a ticket she had purchased for her fiancé, who was in Florida. When Hall arrived at her apartment, he came inside because Dalton needed to finish getting ready for the trip. Hall went out onto Dalton's patio through a sliding glass door to smoke a cigarette. When he came back into the apartment, they left. Dalton testified that it was approximately 11:00 a.m. when they had left her apartment, and that they had returned around 2:00 p.m.

While they were driving, Dalton noticed that Hall kept sending text messages to someone, but she did not inquire about it. Eventually they arrived at the Dayton airport, where she retrieved her ticket and then asked Hall to take her to a fast-food restaurant because she was hungry. Hall said that he too was hungry, but that he wanted to go to a "sit-down" restaurant. Dalton said she could not afford that, and Hall offered to pay. They went to a "sit-down" restaurant where Dalton ordered a meal, but Hall did not. He suddenly was not hungry, but he did pay for Dalton's meal. Hall then drove Dalton back to her apartment, but then refused to accompany her upstairs, which was unusual. Dalton then went upstairs and tried to call Hall to thank him, but he did not answer the phone or respond to any text message that she sent.

Once inside the apartment, Dalton noticed that her laptop computer was missing, and when she investigated, she realized that other items were missing, including the money from the oven. She immediately called the police and filed a

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report. After thinking over the events from the day and noticing that her sliding glass door to the patio was unlocked, even though she normally kept all the doors locked, she began to suspect that Hall was responsible for the burglary.

The police obtained a search warrant and retrieved the text-messaging records from the cellular phone that Hall used as his personal telephone. The telephone company only stored the first 15 characters of a text message. Thus, at trial the state presented the following truncated text messages that had been sent from or to Hall's phone, all of which involved only one other telephone number, presumably belonging to Hall's accomplice:

<b>To/From Hall</b>	<b>Message</b>	<b>Time</b>
<i>To Hall</i>	<i>How it look?</i>	11:16:38
<i>To Hall</i>	<i>Information</i>	11:24:34
From Hall	Good	11:26:08
From Hall	Address one two	11:27:03
<i>To Hall</i>	<i>So everythin go</i>	11:27:26
<i>To Hall</i>	<i>Frontdoor or ba</i>	11:28:54
<i>To Hall</i>	<i>Front or back</i>	11:30:59
From Hall	Back	11:31:16
<i>To Hall</i>	<i>K</i>	11:31:43
<i>To Hall</i>	<i>Which apartment</i>	11:37:53
From Hall	A	11:38:33
From Hall	It is in the ov	11:38:54
<i>To Hall</i>	<i>Got it we back</i>	11:40:54

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From Hall	Lock shit up if	11:43:51
<i>To Hall</i>	<i>K</i>	11:44:27
From Hall	No leave the fr	11:46:08
<i>To Hall</i>	<i>I didn't touch i</i>	11:47:40
From Hall	Lock the patio	11:49:20
<i>To Hall</i>	<i>Too Late</i>	11:49:57
From Hall	It is a extra l	11:50:05

Detective Thomas Lipps, the lead investigator in the case, testified that he had contacted Hall using the telephone number that Dalton had provided. Lipps testified that Hall had become irate and refused to talk to Lipps.

The defense presented the testimony of Roya Salehpour, a paramour of Hall's who had lived with him for a period of time. During her cross-examination, the prosecutor asked Salehpour about pending charges against her. Defense counsel objected, and the objection was sustained; but the prosecutor asked the question two more times, using different verbiage. Each time, there was an objection that was sustained. Salehpour testified that she did not know whether to believe Hall or Dalton, since she was a friend of both. Regardless, Salehpour's testimony centered on the fact that Dalton had stored marijuana in her apartment for a drug dealer named "Jed," and that it was the marijuana that had been stolen, not money. The inference was that Dalton had stolen the marijuana and was blaming Hall. But Detective Lipps testified that there had been no drug paraphernalia in Dalton's apartment, and that the apartment had not smelled of marijuana.

The jury deliberated for one hour and found Hall guilty of burglary. Two weeks later, Hall was sentenced. At the sentencing hearing, Hall submitted a written motion

for a new trial based on a juror's letter to the court that she had felt coerced by other jurors, who were anxious to leave for the day, to determine that Hall was guilty, and that she believed that the jury had not thoroughly reviewed the evidence and had not adequately deliberated the issues. This letter, which was not in the form of an affidavit, was attached to the motion for a new trial. Citing Evid.R. 606(B), the trial court did not allow the juror to provide evidence and denied the motion for new trial.

In his first assignment of error, Hall now contends that the trial court erred by allowing Detective Lipps to testify about a "pre-arrest, pre-[M]iranda statement allegedly made by the Defendant." We review this assignment for plain error, as there was no objection to this testimony at trial. We hold that even if there was an error, Hall suffered no prejudice: the outcome of the trial would not have been any different in view of the overwhelming evidence of guilt.<sup>4</sup> The phone records demonstrated that Hall had been sending detailed instructions to another person about where Dalton's apartment was located, how to enter the apartment, and where items were kept. Further, the evidence showed that the relevant text messages were all sent during the time that Hall was driving Dalton to the airport.

The first assignment of error is overruled.

In his second assignment of error, Hall maintains that he was denied a fair trial due to prosecutorial misconduct. Although we agree that it was improper for the prosecutor to continue to pursue a line of questioning after the trial court had sustained an objection to the questioning, we hold that Hall was not prejudiced by this transgression because of the overwhelming evidence of his guilt, and because any damage that may have occurred to Salehpour's credibility was of limited

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<sup>4</sup> See *State v. Campbell* (1994), 69 Ohio St.3d 38, 41, 630 N.E.2d 339.

consequence when her testimony did not necessarily favor Hall.<sup>5</sup> She had testified that she did not know whether to believe Hall's assertion that he did not commit the burglary—even if it was marijuana that had been stolen. Accordingly, the second assignment of error is overruled.

In his third and final assignment of error, Hall contends that the trial court erred in overruling his motion for a new trial. We overrule this assignment of error because there was no evidence to support the assertion of juror misconduct. Although defense counsel asked the trial court to allow the juror to testify about pressure from other jurors to reach a verdict, the trial court properly denied this request. Evid.R. 606(B) does not permit a juror to submit an affidavit or to “testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict.” The third assignment of error is overruled.

Having overruled each assignment of error, we affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**PAINTER, P.J., HILDEBRANDT and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 19, 2007  
per order of the Court \_\_\_\_\_.

Presiding Judge

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<sup>5</sup> See *State v. Lorraine* (1993), 66 Ohio St.3d 414, 419, 420, 613 N.E.2d 212.