

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

STATE OF OHIO,	:	APPEAL NO. C-100336
	:	TRIAL NO. B-0906522
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RONALD TANKS,	:	
Defendant-Appellant.	:	

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

Defendant-appellant, Ronald Tanks, appeals a conviction for burglary under R.C. 2911.12(A)(1). We find no merit in his two assignments of error, and we affirm the trial court's judgment.

The record shows that Cynthia Wood was working for Cincinnati Bell on the eleventh floor of an office building in downtown Cincinnati. The public had access to the common area of the floor by the elevator, but to enter the area where Wood worked, a keycard was needed.

As she was getting ready to leave work for the day, Wood put some money in a small coin purse that she zipped shut. She put the coin purse into a bigger purse, which she also zipped shut. Then, she put her purse in a tote bag that was on top of her desk. She left her desk for a few minutes to use the restroom.

When she returned, Wood saw a man whom she did not know standing by her desk, moving his hands by her tote bag. She asked him what he was doing, and he

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

said, “[O]h nothing.” She saw that her purse was unzipped, so she asked him if he had been in her purse, to which he replied, “I didn’t steel [sic] anything.”

When Wood looked in her purse, she saw that her coin purse was also unzipped and that the money inside it was missing. She turned around to confront the man, but he had fled. She ran after him down the hall, yelling for someone to stop him.

Wood then called Cincinnati Bell’s security department. Security cameras were located in the lobby area of the floor by the elevators, although they were not in the private employee areas. The video from the cameras on the eleventh floor showed the intruder following someone with a keycard into the private area. Video from other cameras also showed him wandering around other floors, trying to open doors.

Security personnel printed photographs of the intruder from the video. They showed them to Wood, who identified the man in the photograph as the man she had seen by her desk.

The security personnel also called the Cincinnati Police Department. Officer Alphonso Staples saw the photographs of the intruder taken from the video cameras. He recognized Tanks as the man in the video because he had previously arrested Tanks for similar burglaries in other downtown office buildings.

After a warrant had been issued for Tanks’s arrest, he appeared at the police station with his brother. Officer Rick Malone told Tanks that the warrant was for burglary. Although Tanks denied being in a private area of the Cincinnati Bell offices or taking any money, he and his brother began to argue with Officer Malone. They contended that Tanks had been overcharged and that he should have been charged with breaking and entering or trespassing.

In his first assignment of error, Tanks contends that the trial court erred in admitting “other acts” evidence. He argues that the court should not have allowed the state to present evidence of other burglaries that Tanks had committed because they were not sufficiently similar to the crime charged in the indictment. This assignment of error is not well taken.

Generally, the prosecution in a criminal trial may not present evidence that a defendant has committed other crimes or acts independent of the crime for which the defendant is being tried to establish that the defendant acted in conformity with his bad character.² But Evid.R. 404(B) provides that other bad acts are admissible to show “motive, opportunity, preparation, plan, knowledge, identity, or absence of mistake or accident.”³

Because Evid.R. 404(B) codifies an exception to the general rule, it must be strictly construed against admissibility.⁴ Nevertheless, the other acts need not be similar to the crime at issue. If the “other act” does in fact tend to show by substantial proof any of the things enumerated in Evid.R. 404(B), evidence of the other act is admissible.⁵

Officer Staples testified that he recognized Tanks in the security video because Tanks had committed similar crimes in office buildings in the past by dressing like an office worker and finding ways to circumvent security, such as posing as a job seeker or a mail handler. This evidence was relevant to show Tanks’s identity as the

² Evid.R. 404(B); *State v. Lukacs*, 1st Dist. Nos. C-090309 and C-090310, 2010-Ohio-2364, ¶37.

³ *State v. Shedrick* (1991), 61 Ohio St.3d 331, 337, 574 N.E.2d 1065; *Lukacs*, supra, at ¶37.

⁴ *State v. Coleman* (1989), 45 Ohio St.3d 298, 299, 544 N.E.2d 622; *State v. Hirsch* (1998), 129 Ohio App.3d 294, 306, 717 N.E.2d 789.

⁵ *Coleman*, supra, at 299-300; *Hirsch*, supra, at 306.

burglar and his plan for committing the offense, regardless of whether the other acts were identical to the offense for which he was being tried.⁶

Further, the “other acts” were interwoven with the crime charged in the indictment and showed an important step in the police officers’ investigation.⁷ Consequently, the trial court did not err in admitting the “other acts” evidence, and we overrule Tanks’s first assignment of error.

In his second assignment of error, Tanks contends that the evidence was insufficient to support his conviction. 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 that the state had proved beyond a reasonable doubt all the elements of burglary under R.C. 2911.12(A)(1). Therefore, the evidence was sufficient to support the conviction.⁸ We overrule Tanks’s second assignment of error, and we affirm his conviction.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 18, 2011

per order of the Court _____
Presiding Judge

⁶ See *Hirsch*, supra, at 306.

⁷ See *Lukacs*, supra, at ¶39; *State v. Kendrick*, 1st Dist. No. C-080509, 2009-Ohio-3876, ¶24.

⁸ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Cooper*, 168 Ohio App.3d 378, 2006-Ohio-4004, 860 N.E.2d 135, ¶9-16; *State v. Chambers* (Mar. 20, 1996), 1st Dist. Nos. C-950357 and C-950686.