

No. 1-12-2547

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 C4 40224
	)	
JERRY PATRICK,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion when it permitted a police officer to testify regarding the details of defendant's arrest where those details did not improperly suggest other crimes.

¶ 2 Following a jury trial, defendant Jerry Patrick was convicted of burglary and because of his criminal background, received a Class X sentence of 12 years in prison. On appeal, defendant contends that he was denied a fair trial because the jury heard improper other-crimes evidence. We affirm.

¶ 3 Defendant's arrest and prosecution arose from a March 2011 incident at the shop of the victim, David Novotny, during which three power tools were taken.

¶ 4 At trial, the victim testified that he left his shop for 45 minutes, and when he returned, he heard a hissing sound. An air hose, which had been attached to a pneumatic chisel, had been cut. He discovered that the chisel and two hand grinders were missing. To his knowledge, the doors to his shop were locked when he left. The victim later went into his office and watched video from the shop's surveillance system. The video showed a man walking to the back of the shop where the tools were located. The victim called the police and gave officers the SD card from a camera attached to the surveillance system. The victim testified that he did not give defendant permission to take any tools. During cross-examination, the victim admitted that the video did not show the air hose being cut or any tools being picked up. The victim later clarified that he could see the man holding a grinder with the cords hanging down.

¶ 5 Officer Steven Boik testified that the victim gave officers the SD memory card, as well as descriptions of the man on the recording and the missing tools. Boik believed that he had previously seen a "scrapper" matching the man's description in the neighborhood. He later watched the video. The next day, Boik was in the neighborhood of the victim's shop when he saw defendant, who matched the description given by the victim. Boik took defendant into custody and transported him to a police station. The following exchange then took place:

"Q: Now on the date and time that you placed the defendant in custody, did he have any items with him?

A: Him and a friend had tools on them but they weren't related to the incident.

Q. So you did recover some power tools?

A: Yes.

Q: And at this time, is it fair to say the investigation revealed that those power tools had nothing to do with [the victim]?

A: Correct."

¶ 6 At the police station, defendant wanted to know why he was there. When asked if he had been in the area of the victim's shop, defendant denied having been at that address, but indicated that he knew there was a Pace bus company nearby. When defendant was shown the surveillance video and asked whether he saw anything familiar, defendant responded that he was the person on the video. He explained that he was in the shop looking for the owner and denied taking anything. Defendant was aware that the shop was not open to the public, but indicated that he was looking for scrap metal. He did not say anything about the missing tools.

¶ 7 Ultimately, defendant was convicted of burglary and sentenced, based upon his criminal background, to a Class X sentence of 12 years in prison.

¶ 8 On appeal, defendant contends that he was denied a fair trial by the improper admission of certain other-crimes evidence. Specifically, defendant argues that Boik's testimony that defendant was found with tools that were not "related to the incident" suggested that defendant had committed other uncharged burglaries. Defendant concedes that he did not object to the introduction of this testimony at trial, but asks this court to review the issue under the plain error exception to normal forfeiture principles.

¶ 9 To preserve a claim of error for review, a defendant must both object at trial and include the alleged error in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Pursuant to the plain error doctrine, this court may address unpreserved errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). In both cases, the burden of persuasion rests with the defendant. *People v. McLaurin*, 235 Ill. 2d 478, 495 (2009).

¶ 10 The first step in determining whether the plain error doctrine applies is to determine whether any reversible error occurred (*People v. Patterson*, 217 Ill. 2d 407, 444 (2005)), as

without reversible error there can be no plain error (*People v. Williams*, 193 Ill. 2d 306, 349 (2000)).

¶ 11 Evidence of crimes for which the defendant is not on trial is only admissible when relevant for a purpose other than to show a defendant's propensity to commit a crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Such evidence may be admissible when it is relevant to show motive, intent, identity, absence of mistake or accident, *modus operandi*, or the existence of a common plan or design. *People v. Wilson*, 214 Ill. 2d 127, 135-36 (2005). Additionally, other-crimes evidence may be admissible when it is part of a continuing narrative of the circumstances surrounding the entire incident (*People v. Evans*, 373 Ill. App. 3d 948, 958 (2007)), or if it is relevant to the police investigation of the offense at issue (*People v. Fauntleroy*, 224 Ill. App. 3d 140, 148 (1991)).

¶ 12 When other-crimes evidence is offered, the trial court must weigh its probative value against its prejudicial effect, and may exclude the evidence if its prejudicial effect substantially outweighs its probative value. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991). The admissibility of evidence is within the sound discretion of the trial court, and its decision may not be overturned on appeal absent an abuse of that discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 13 Although defendant contends that Boik's testimony constituted other-crimes evidence because it "strongly suggested" that defendant had committed other burglaries, the State responds that the complained of testimony merely detailed the circumstances surrounding defendant's arrest and the progress of the investigation.

¶ 14 Here, we agree with the State that no error occurred when the court permitted Boik to testify that the power tools recovered from defendant were not those taken from the victim's shop because this testimony did not describe or suggest that defendant was involved in any other

criminal misconduct. Boik's testimony, taken in its entirety, shows that rather than accusing defendant of committing other uncharged burglaries, Boik was explaining the circumstances under which defendant was arrested, *i.e.*, that defendant fit the victim's description of the man on the surveillance video. The contested exchange between the State and Boik indicated that although certain power tools were recovered from defendant and his companion at the time of his arrest, the ultimate result of the investigation established that those tools were not the victim's tools. See *People v. Johnson*, 114 Ill. 2d 170, 194 (1986) (the consequential steps in the investigation of a crime are relevant when necessary to fully explain the State's case to the trier of fact).

¶ 15 This court is unpersuaded by defendant's reliance on *People v. Barnes*, 182 Ill. App. 3d 75 (1989), and *People v. Harbold*, 124 Ill. App. 3d 363 (1984), as in both cases it was the combination of multiple actions by the State, including the admission of evidence of bad character, which caused the jury to consider the defendant a person with the propensity to commit crimes.

¶ 16 In *Barnes*, the court determined that the State "bombarded" the jury with the fact that over \$4,000 in small bills was recovered from the defendant at the time of his arrest in order to suggest that the cash was obtained illegally so that the jury would consider the money when assessing the defendant's credibility. *Barnes*, 182 Ill. App. 3d at 83-84. The court concluded that although the jury was admonished that the possession of U.S. currency was not illegal *per se* and told the funds were returned to the defendant, that information did not cure the effect of the admission when it was considered in conjunction with other evidentiary errors. *Barnes*, 182 Ill. App. 3d at 84. Similarly, in *Harbold*, the court found that the State intentionally committed misconduct by eliciting testimony concerning a weapon found at the defendant's residence in

order to show "the type of person [defendant was]." *Harbold*, 124 Ill. App. 3d at 384. The court found that the error was not harmless where the trial court's admonishment to the jury to disregard any reference to a weapon was made several minutes after the reference and where the State engaged in a "consistent tactic of bolstering its case with irrelevancy." *Harbold*, 124 Ill. App. 3d at 384.

¶ 17 In the case at bar, unlike *Barnes* and *Harbold*, the complained of testimony was not part of an attack upon defendant's character. In fact, there is nothing illegal about the possession power tools and there was no implication in the record that the tools recovered from defendant, an admitted scrapper, were stolen. Rather, Boik's testimony explained the details of defendant's arrest and that the ultimate result of the investigation revealed that the power tools in defendant's possession at the time of his arrest were not related to the incident at the victim's shop.

¶ 18 Ultimately, the complained of testimony described the circumstances of defendant's arrest and clarified that although defendant possessed power tools at the time of his arrest, the victim's tools were not recovered from defendant. The trial court did not abuse its discretion by permitting Boik to testify regarding these details. See *Becker*, 239 Ill. 2d at 234 (an abuse of discretion occurs only where the trial court's decision is arbitrary, unreasonable or where no reasonable person would take the view adopted by the trial court). Absent error, there can be no plain error (*Williams*, 193 Ill. 2d at 349), and this court must honor defendant's procedural default.

¶ 19 Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.