

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

STATE OF OHIO,	:	APPEAL NOS. C-070859
		C-070860
Plaintiff-Appellee,	:	TRIAL NOS. B-0609322
		B-0609775
vs.	:	
		<i>JUDGMENT ENTRY.</i>
JAMES BOHANNON,	:	
Defendant-Appellant.	:	

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

Following a jury trial, defendant-appellant James Bohannon was convicted of five counts of aggravated robbery, three counts of rape, two counts of gross sexual imposition, and seven counts of kidnapping, each with a sexual-motivation specification. Bohannon’s victims were seven young men. The trial court imposed an aggregate prison term of 99 years. Bohannon now appeals his convictions, bringing forth four assignments of error. We affirm.

In his first assignment of error, Bohannon contends that the trial court should have removed a potential juror for cause because that juror could not definitively state that he could be “fair and impartial.”

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

A prospective juror who discloses that he cannot be fair and impartial, or that he will not follow the law, may be challenged for cause.² The decision whether to remove a potential juror for cause is a matter within the sound discretion of the trial court.³

Here, the trial court engaged in a thorough discussion with the prospective juror after he had expressed concern over hearing a case about “abuse.” There was nothing in that discussion that indicated that the juror would not or could not be fair and impartial in considering the case against Bohannon. Accordingly, the trial court did not abuse its discretion in refusing to dismiss this prospective juror for cause. The first assignment of error is overruled.

In his second assignment of error, Bohannon argues that the trial court committed reversible error in failing to preserve written jury instructions as part of the record for appellate review.⁴ Because Bohannon did not object to this alleged error at trial, we review the trial court’s failure to maintain written jury instructions for plain error under Crim.R. 52(B).⁵

Here, we cannot say that the absence of written instructions from the record amounts to plain error. First, there is no indication in the record that the jury instructions were even reduced to writing. It appears from the record that the oral instructions given to the jury were tape-recorded and that a cassette tape was given to the jury. Second, Bohannon does not argue, nor does the record indicate, that any written instructions deviated from the oral instructions given to the jury. Because

² R.C. 2313.42(J).

³ *State v. McGlothin*, 1st Dist. No. C-060145, 2007-Ohio-4707, at ¶10, citing *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 559 N.E.2d 1301, syllabus.

⁴ See R.C. 2945.10(G).

⁵ See *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643.

Bohannon has not shown how he has been prejudiced by the failure to preserve written jury instructions, we overrule his second assignment of error.

In his third assignment of error, Bohannon argues that the trial court erred by failing to properly instruct the jury on the elements of aggravated robbery. Specifically, when giving the instructions on aggravated robbery, the trial court failed to properly instruct the jury that the defendant had to “display, brandish, or use” a handgun in the commission of a theft.⁶ Instead, the trial court simply instructed the jury that the defendant only had to possess a handgun while committing or attempting to commit a theft offense. Because Bohannon did not object to this improper jury instruction, he has waived all but plain error. Plain error requires that, but for the error, the outcome of the trial clearly would have been otherwise.⁷

Here, we conclude that, in the absence of the erroneous jury instruction, the outcome of the trial would not have been different. The victims of the aggravated robberies each testified at trial that Bohannon had pointed a small black handgun at them during the commission of the offenses. Furthermore, the issue at trial was not whether Bohannon had displayed, brandished, or used a gun, but whether the victims had properly identified Bohannon as their attacker. Accordingly, we overrule Bohannon’s third assignment of error.

In his fourth and final assignment of error, Bohannon contests the sufficiency of the evidence underlying his convictions with respect to four of the victims. He argues that these four victims — Darrin Maggard, John Hall, David Heyne, and Adam Sullivan — did not and could not identify Bohannon as their attacker.

⁶ See R.C. 2911.01(A)(1).

⁷ See, e.g., *State v. Reid*, 1st Dist. No. C-050465, 2006-Ohio-6450, at ¶16.

In reviewing the sufficiency of the evidence, we must determine whether, after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found that all the essential elements of the offenses had been proved beyond a reasonable doubt.⁸ After reviewing the record, we hold that there was sufficient evidence presented at trial to demonstrate that Bohannon was the attacker of Maggard, Hall, Heyne, and Sullivan.

With respect to Maggard, a serologist from the Hamilton County Coroner's Office testified that the semen found in Maggard's rectum and underwear contained Bohannon's DNA. This was sufficient evidence, despite a lack of identification by Maggard at trial, to show that Bohannon was the person who had raped Maggard. Turning to Hall, we note that Hall identified Bohannon as his attacker at trial. This was sufficient evidence that Bohannon was Hall's attacker. With respect to Heyne and Sullivan, although they could not identify Bohannon as their attacker, their description of the crimes against them matched the mode of operation used by Bohannon against his other five victims. All the young male victims testified that a black man, wearing dark clothing and a "beanie"-type hat, had approached them late at night, asked them either for a cigarette or if they had any drugs, then displayed a small black handgun (later shown to be a air gun), dragged them to a secluded area, and attempted to fondle or anally rape them. Furthermore, with respect to Heyne, he was familiar with handguns and described his attacker's handgun as a Walther-style PPK or "James Bond" handgun. The type of air gun found in Bohannon's home was modeled after a Walther-style PPK.

⁸ *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Roberts*, 1st Dist. No. C-040547, 2005-Ohio-6391.

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Concluding that there was sufficient evidence to support the finding that Bohannon had attacked Maggard, Hall, Heyne, and Sullivan, we overrule his fourth assignment of error.

Therefore, the judgment of the trial court is affirmed.

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.

SUNDERMANN, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 11, 2009
per order of the Court _____.
Presiding Judge