

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

STATE OF OHIO,	:	APPEAL NO. C-170516
Plaintiff-Appellee,	:	TRIAL NO. 17CRB-13526
vs.	:	<i>JUDGMENT ENTRY.</i>
ASHLEY BROGDEN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant was found guilty of criminal damaging, after a bench trial. She was sentenced to 90 days in jail and ordered to pay restitution.

In her sole assignment of error, Brogden argues that the trial court erred by allowing other-acts evidence to be introduced when the state did not provide notice of its intent to use the other-acts evidence. Specifically, she contends that the victim's testimony that her car had been scratched after she had testified against Brogden in a different trial, Brogden had been convicted of criminal offenses, and Brogden had been upset after the trial should not have been introduced absent advance notice.

Brogden is not arguing that the other-acts evidence was inadmissible, and we note that the evidence was admissible to show her motive and opportunity to commit the criminal-damaging offense.

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Brogden did not raise the issue of the lack of advance notice at trial, and has waived all but plain error. *See State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph one of the syllabus.

Evid.R. 404(B) requires the proponent of other-acts evidence to provide reasonable notice of its use in advance of trial. However, the rule requiring notice “should not be construed to exclude otherwise relevant and admissible evidence solely because of a lack of notice, absent a showing of bad faith.” Staff Notes to the 2012 Amendment to Evid.R. 404; *State v. Binks*, 12th Dist. Butler No. CA2017-08-118, 2018-Ohio-1570, ¶ 48.

Because the lack of notice was not raised in the trial court, the record is devoid of any evidence of bad faith, and the lack of notice cannot be construed to exclude the admissible evidence. *See id.* Accordingly, the trial court did not err by allowing the state to introduce the other-acts evidence. The assignment of error is overruled, and the judgment of the trial court is affirmed.

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

**MOCK, P.J., ZAYAS and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on October 26, 2018

per order of the court \_\_\_\_\_.

Presiding Judge