[Cite as *State v. Stevenson*, 2009-Ohio-2455.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C. A. No. 24408
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
DION T. STEVENSON	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 01 0053

DECISION AND JOURNAL ENTRY

Dated: May 27, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Dion Stevenson, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On January 6, 2008, Jennise Kidd, the victim herein, parked her 1998 Chevy Malibu in front of her apartment in Akron. Kidd resided at the Akron apartment with her three daughters. She left the keys in the ignition of the vehicle and went inside the apartment. Kidd planned to quickly return to the vehicle to drive one of her daughters to the hospital. Shortly after entering her apartment, one of her daughters informed Kidd that someone was driving away with her car. She ran out the door and watched the car drive away. She could not confirm whether a male or female was driving the vehicle, but only that there was one person in the vehicle. Thereafter, one of Kidd's daughters called 911. Kidd borrowed her sister's car and

began searching for her vehicle. She eventually returned home to meet with the police. Thereafter, she borrowed another vehicle and resumed her search. She ultimately spotted her car near Brown Street and Lovers Lane. She phoned police and spoke with the 911 operator as she continued to pursue her vehicle. As she talked with the operator, two police cruisers also began following the Malibu. Kidd backed off to allow the officers to pursue the vehicle. Once the police began their close pursuit, the officers activated their lights and sirens. The vehicle did not stop. Instead, the vehicle sped up, ultimately reaching a speed of 60-70 mph on a residential street with a speed limit of 25 mph. The officers observed the vehicle run at least four stop signs. The driver eventually lost control of the vehicle and it jumped the curb, crashed into the front porch of a house and then struck a nearby tree. The porch was demolished and the Malibu suffered extensive damage.

{¶3} Once the car came to a stop, the driver exited the vehicle through the passenger-side window. Once out of the vehicle, the driver began running away from the officers. The officers ultimately apprehended the driver - Stevenson - after they used a taser gun to subdue him. Stevenson continued to struggle as officers handcuffed him. Stevenson immediately informed officers that a man named Calvin had been driving the car. He claimed that Calvin drove the Malibu and that he was just a passenger. He claimed that Calvin had obtained the car in exchange for drugs. Later Stevenson said that Calvin sent him out in the Malibu to purchase beer. Stevenson admitted to officers that he knew the vehicle was stolen.

{¶4} On January 17, 2008, Stevenson was indicted on six counts including failure to comply, in violation of R.C. 2921.331(B), a felony of the third degree; receiving stolen property, in violation of R.C. 2913.51(A), a felony of the fourth degree; driving under suspension, in violation of R.C. 4510.11, a misdemeanor of the first degree; obstructing official business, in

violation of R.C. 2921.31(A), a misdemeanor of the second degree, reckless operation, in violation of R.C. 4511.20, a minor misdemeanor; and failure to control, in violation of R.C. 4511.202, a minor misdemeanor.

{¶5} Stevenson's case proceeded to a jury trial on June 2, 2008. Prior to the commencement of trial, the State dismissed the reckless operation and failure to control charges. The jury convicted Stevenson of the remaining counts: failure to comply, receiving stolen property, driving under suspension, and obstructing official business.

{¶6} After trial, Stevenson alerted the court that the jury verdict form whereby he was found guilty of receiving stolen property did not include a degree of the offense charged. Accordingly, prior to the imposition of sentence, the State agreed this conviction would be reduced to a first degree misdemeanor, rather than the fourth degree felony that the State had pursued at trial. Thereafter, the trial court sentenced Stevenson to a misdemeanor term for the receiving stolen property conviction and to four years of incarceration on the failure to comply offense, six months on the driving under suspension offense and ninety days for obstructing official business. The trial court ordered that the misdemeanor terms run concurrently with the four-year sentence. Stevenson's sentence was suspended, and the court imposed two years of community control. He timely appealed his convictions and has raised three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED [] STEVENSON'S MOTION FOR JUDGMENT OF ACQUITTAL UNDER CRIM.R. 29."

{¶7} In his first assignment of error, Stevenson contends that the trial court committed reversible error when it denied his motion for judgment of acquittal under Crim.R. 29. We disagree.

{¶8} Crim.R. 29(A) provides, in relevant part:

> "The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case."

{¶9} When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution has met its burden of production, while a manifest weight challenge requires the court to examine whether the prosecution has met its burden of persuasion. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). To determine whether the evidence in a criminal case was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the prosecution:

> "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶10} On appeal, Stevenson challenges all four of his convictions on the basis that he was not the person operating the stolen vehicle and that the vehicle was actually operated by a person named Calvin. The State presented ample evidence that Stevenson was the person operating the vehicle and the only person in the vehicle. Kidd testified that she observed only one person in the vehicle as it pulled away from her apartment. The officers testified that as they

pursued the stolen vehicle, they observed only one person in the vehicle – the driver. Further, the officers testified that Stevenson was the only person who exited the vehicle after it crashed.

{¶11} A review of the record reflects that the State met its burden with regard to each of the convictions. Stevenson was convicted of failure to comply, in violation of R.C. 2921.331(B), a third degree felony. R.C. 2921.331 provides, in relevant part, that

> "(B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.
>
> "(C)(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.
>
> "***
>
> "(5)(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:
>
> "(i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.
>
> "(ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property."

{¶12} The jury specifically found that Stevenson's operation of the motor vehicle resulted in serious physical harm to property and caused a substantial risk of serious physical harm to both persons and property. The State presented evidence that Stevenson seriously wrecked the vehicle, caused significant damage to a front porch, and threatened the lives of the officers and pedestrians when he operated the vehicle on a residential street at an extreme rate of speed. This Court has previously upheld a conviction for failure to comply where the defendant traveled at a high rate of speed running away from police and violated several traffic laws before being apprehended. See *State v. Johnson*, 9th Dist. No. 22789, 2006-Ohio-2277, at ¶¶9, 22; *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶¶15, 19.

{¶13} Stevenson was also convicted of one count of receiving stolen property, in violation of R.C. 2913.51(A). R.C. 2913.51(A) states that

> "No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense."

The State specifically presented evidence that Stevenson admitted to the officers that he knew the vehicle was stolen. Further, the State presented ample evidence that Stevenson was operating the motor vehicle at the time of the crash.

{¶14} Stevenson was also convicted of obstructing official business, in violation of R.C. 2921.31(A). R.C. 2921.31(A) states

> "No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties."

{¶15} The State presented testimony at trial that once Stevenson exited the vehicle, he began running away from the officers. The officers ultimately apprehended Stevenson after they used a taser gun to subdue him. However, he continued to struggle as officers handcuffed him. Stevenson's actions clearly hampered and impeded the officers in the performance of their duties.

{¶16} Lastly, Stevenson was convicted of driving under suspension, in violation of R.C. 4510.11. The record reflects that the State presented evidence that Stevenson's license was suspended at the time of the crash.

{¶17} Our review of the record indicates that the evidence was sufficient to support Stevenson's convictions. Accordingly, Stevenson's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"[STEVENSON'S] CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶18} In his second assignment of error, Stevenson argues that his conviction was against the manifest weight of the evidence. We disagree.

{¶19} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, at *1, citing *Thompkins*, 78 Ohio St.3d at 390.

{¶20} A determination of whether a conviction is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *Love*, supra, at ¶11. Rather,

> "an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

{¶21} Stevenson has not set forth any specific arguments regarding the weight of the evidence. Rather, he has simply incorporated his arguments from his first assignment of error. An appellant has the burden on appeal. See App.R. 16(A)(7); Loc.R. 7(A)(7). "It is the duty of the appellant, not this court, to demonstrate his assigned error through an argument that is supported by citations to legal authority and facts in the record." *State v. Taylor* (Feb. 9, 1999), 9th Dist. No. 2783-M, at *3. See, also, App.R. 16(A)(7); Loc.R. 7(A)(7). As we have previously held, we will not guess at undeveloped claims on appeal. See *McPherson v. Goodyear Tire & Rubber Co.*, 9th Dist. No. 21499, 2003-Ohio-7190, at ¶31, citing *Elyria Joint Venture v.*

Boardwalk Fries, Inc. (Jan. 31, 2001), 9th Dist. No. 99CA007336. As Stevenson has failed to meet this burden, we decline to further address this contention. Accordingly, Stevenson's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> "THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED IMPROPER AND PREJUDICIAL OTHER-ACTS EVIDENCE."

{¶22} In Stevenson's third assignment of error, he argues that the trial court committed reversible error when it allowed improper and prejudicial other-acts evidence. We disagree with Stevenson's argument.

{¶23} "We review the trial court's admission or exclusion of evidence for an abuse of discretion." *State v. Travis*, 9th Dist. No. 06CA0075-M, 2007-Ohio-6683, at ¶24, citing *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 22. "The Supreme Court of Ohio has articulated two requirements for the admission of other acts evidence. First, substantial evidence must prove that the other acts were committed by the defendant as opposed to another person. Second, the other acts evidence must fall within one of the theories of admissibility enumerated in Evid.R. 404(B)." (Internal citations omitted.) *State v. Stephens*, 9th Dist. No. 23845, 2008-Ohio-890, at ¶14, citing *State v. Broom* (1988), 40 Ohio St.3d 277, 282. See also, *State v. Lowe* (1994), 69 Ohio St.3d 527, 530.

{¶24} "Generally, evidence of prior criminal acts, wholly independent of the crime for which defendant is being tried, is inadmissible." *State v. Wilkins* (1999), 135 Ohio App.3d 26, 29, citing *State v. Thompson* (1981), 66 Ohio St.2d 496, 497. However, an exception to this general rule exists, as provided for in Evid.R. 404(B). Specifically, Evid. R. 404(B) states:

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may,

> however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶25} Here, Stevenson denied committing any of the charged offenses and instead blamed a person named "Calvin". He also claimed that he had acquired the car in exchange for drugs. At trial, the State introduced evidence of two factually similar prior acts. First, the State introduced evidence that in February of 2006, Stevenson was driving a stolen vehicle when he struck a pedestrian and crashed into a fire hydrant. Stevenson fled the vehicle after the crash. When the police finally apprehended him, Stevenson stated that he had obtained the vehicle through a person who lent it to him in exchange for drugs.

{¶26} The State also presented evidence that in November of 2001, Stevenson was driving a stolen vehicle. Akron police effectuated a stop of the vehicle. As the police approached the vehicle, Stevenson jumped into the backseat. However, he later confessed that he had been driving the vehicle. Stevenson told officers that he had been at "Calvin's house" smoking crack all day. Stevenson was convicted of receiving stolen property.

{¶27} Upon review, we conclude that the trial court did not abuse its discretion in admitting the other-acts evidence. Evidence of Stevenson's prior acts with regard to stolen vehicles was relevant given Stevenson's similar statements to officers that in the other two cases (1) the vehicle had been acquired in exchange for drugs, (2) he had been at "Calvin's house" prior to driving a stolen vehicle, and (3) that he had not been driving the stolen vehicle. Clearly, Stevenson's intent was to deny that he had been driving the vehicle and to claim that the car was not stolen, but rather that the car had been obtained by someone else in exchange for drugs.

{¶28} Further, the jury is presumed to follow the trial court's instructions. *State v. Garner* (1995), 74 Ohio St.3d 49, 59. Here, the trial court instructed the jury that it should only consider the other acts evidence for a limited purpose and that this evidence should not be

considered "to prove the character of the defendant in order to show that he acted in conformity with that character." The trial court further instructed the jury that

> "If you find that the evidence of the crime of receiving stolen property is true and that the defendant committed it, you may consider that evidence only for the purpose of deciding whether it proves the absence of mistake or accident or the defendant's motive, intent or purpose to commit the offense charged in this trial. That evidence cannot be considered for any other purpose."

Accordingly, we presume that the jury only considered the other-acts evidence for this limited purpose.

{¶29} Stevenson's third assignment of error is overruled.

III.

{¶30} Stevenson's assignments of error are overruled and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

DICKINSON, J.
BELFANCE, J.
CONCUR

APPEARANCES:

DONALD R. HICKS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.