

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO, : Case No. 24CA6
 :
 Plaintiff-Appellee, :
 v. :
 : DECISION & JUDGMENT ENTRY
 JACOB A. BURCHETT, :
 :
 Defendant-Appellant. :
 :

APPEARANCES:

Karyn Justice, Esq., The Law Office of Karyn Justice, LLC,
Portsmouth, Ohio, for appellant.¹

Brigham Anderson, Prosecuting Attorney, and Andrea M.
Kratzenberg, Assistant Prosecuting Attorney, Ironton, Ohio, for
appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:11-21-25
ABELE, J.

{¶1} This is an appeal from a Lawrence County Common Pleas
Court judgment of conviction for driving while under the
influence of alcohol or drugs (OVI), a fourth-degree felony
based on three prior convictions within ten years. Jacob A.
Burchett, defendant below and appellant herein, assigns one
error for review. Appellant asserts that the State failed to
meet its burden to produce sufficient evidence because the

¹Different counsel represented appellant during the trial court proceedings.

evidence presented at trial regarding his prior convictions is insufficient to prove that he is the same Jacob Burchett previously convicted of OVI.

I. FACTS AND PROCEDURAL HISTORY

{¶2} In August 2023, a Lawrence County Grand Jury returned an indictment that charged appellant with one count of driving while under the influence of alcohol or drugs in violation of R.C. 4511.19(A)(1)(a), a fourth-degree felony, based upon his three prior convictions within ten years as provided in R.C. 4511.19(G)(1)(d). Appellant pleaded not guilty and the matter proceeded to a jury trial.

{¶3} Ohio State Highway Patrol Trooper Travis Stump testified that on the morning of July 29, 2023 he responded to a call concerning a pick-up truck idling in the middle of a road with the driver unconscious and his foot on the brake. When Stump arrived, several people stood around the vehicle. Stump soon determined that the driver, appellant, had awakened and stood next to the truck. The State presented the trooper's body camera and interior patrol car camera recordings for the jury. When Stump asked appellant where he had been the night before, appellant said he had been at a friend's house and had been drinking beer, but did not know how much. Stump performed a partial Horizontal Gaze Nystagmus test and, based on the totality on the circumstances, determined that appellant was

impaired. Appellant, however, declined to perform any additional field sobriety tests. Stump then advised appellant of his Miranda rights and placed him in the patrol car. Stump also asked appellant about any prior OVI convictions and he replied he had three. Stump then checked the LEADS system (Law Enforcement Automated Data System, a computer database with information about vehicles and driver's licenses) and found appellant's three prior OVI convictions.

{¶4} At trial, to establish appellant's three prior convictions the State introduced certified copies of three judgments of convictions for OVI, from 2020, 2021, and 2022, each from the Lawrence County Municipal Court. Trooper Stump testified about the contents of the three judgments of conviction by reading information from each of the judgments. Stump also testified that, based on his review of the LEADS report, the start date for the license suspension on each of the judgments of conviction was the date of the OVI offense. Stump, however, did not testify about any details concerning the driver's identity, such as date of birth and social security number, to connect the driver in the LEADS report to the defendant identified in the judgments of conviction. Also, the State did not introduce the LEADS report into evidence. Stump testified he had never met Burchett before his July 29, 2023 arrest.

{¶5} The State moved to admit the exhibits into evidence and Burchett's trial counsel objected to the admission of the three judgments of conviction entries on the foundational ground that Trooper Stump had no personal knowledge of the cases and simply read the information on the judgments of conviction. The State argued that the judgments of conviction should be admissible because the certified copies of judgments of conviction complied with Crim.R. 32(C) and did not require Stump's testimony for foundation. The trial court overruled the objection and admitted the judgments of conviction into evidence.

{¶6} Subsequently, appellant's trial counsel moved for a Crim.R. 29 judgment of acquittal and argued that the State failed to present evidence that appellant is the same individual named in the judgment entries as R.C. 2945.75(B)(1) requires. The statute requires not only a certified copy of the judgment of conviction entry, but also evidence sufficient to identify the defendant named in that entry as the offender in the present case. The State again argued that Trooper Stump did identify the name of the defendant in each of the entries as "Jacob A. Burchett" and "there is nothing provided to show that it wasn't him in regards to these matters." The State further argued that appellant's admission about his three prior OVI convictions constituted sufficient evidence to connect him to the three

judgments of conviction: "He also stated in the video himself that he has three prior OVI's and so this just complies in regards to that." The trial court denied appellant's motion for judgment of acquittal.

{¶7} After deliberation, the jury found appellant guilty of OVI, a fourth-degree felony. The trial court sentenced him to serve five years of community control that included completion of the STAR program, participate in drug and alcohol treatment, complete 400 hours of community service and pay a \$1,350 fine. The court also issued a lifetime driver's license suspension.

II. ASSIGNMENT OF ERROR

{¶8} In his sole assignment of error, appellant asserts that the State did not produce sufficient evidence of appellant's prior OVI convictions.

{¶9} Whether sufficient evidence supports a conviction is a question of law that appellate courts review de novo. *State v. Jackson*, 2018-Ohio-4289 (4th Dist.). In reviewing the sufficiency of the evidence for a conviction, "[t]he 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 the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio

St.3d 89, 102, fn. 4 (1997), and following *Jackson v. Virginia*, 443 U.S. 307 (1979). "A sufficiency assignment of error challenges the legal adequacy of the state's prima facie case, not its rational persuasiveness." *State v. Anderson*, 2019-Ohio-395, ¶ 13 (4th Dist.). "That limited review does not intrude on the jury's role 'to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Musacchio v. United States*, 577 U.S. 237, 243 (2016), quoting *Jackson* at 319.

{¶10} The elements of the offense of driving while under the influence of alcohol or drugs and the level of the offense are set forth in R.C. 4511.19:

(A)(1) No person shall operate any vehicle, . . . within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

G)(1) Whoever violates any provision of divisions (A)(1)(a) . . . of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. . . . The court shall sentence the offender for either offense under Chapter 2929. of the Revised Code, except as otherwise authorized or required by divisions (G)(1)(a) to (e) of this section:

(d) Except as otherwise provided . . . , an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to three or four violations of division (A) of this section or other equivalent offenses, . . . is guilty of a felony of the fourth degree. . . .

When a prior conviction must be proven, R.C. 2945.75 provides acceptable methods, including the relevant one here:

(B)(1) Whenever in any case it is necessary to prove a prior conviction, a certified copy of the entry of judgment in such prior conviction together with evidence sufficient to identify the defendant named in the entry as the offender in the case at bar, is sufficient to prove such prior conviction.

It is important to recognize that a copy of a judgment entry is not the only method to prove a prior conviction, but if this method is used, the entry must comply with Crim.R. 32(C) (contain the fact of conviction, the sentence, the judge's signature, and the clerk must enter it in the journal). *State v. Gwen*, 2012-Ohio-5046, ¶ 9 (alternative methods to prove a prior conviction include the parties' stipulation). However, the State must present sufficient evidence to identify the defendant named in the judgment of conviction as the offender in the case at bar. To satisfy the identity requirement of R.C. 2945.75(B)(1), the State typically uses witness testimony to prove that the defendant is the person identified in the judgment of conviction. *State v. Walker*, 2022-Ohio-1238, ¶ 21 (8th Dist.); *State v. Macalla*, 2008-Ohio-569 (8th Dist.) (clerk of court employees testified that the date of birth and social security number of the defendant in the prior convictions were that of the offender in the case and police officer testified that offender's social security number, name, and date of birth

matched the driver in the LEADS report identifying the prior OVI convictions and the LEADS report was admitted into evidence).

{¶11} In the case sub judice, appellant argues that the State failed to establish his prior OVI convictions because, even though it submitted certified copies of judgment entries, the State did not provide evidence that the Jacob Burchett named in the entries is the offender in the case at bar as R.C. 2945.75(B)(1) requires. The State argues, however, that Trooper Stump's testimony about the LEADS report, when compared with the dates on the judgments of conviction, sufficiently identifies Burchett as the individual in the judgment entries. The State also contends that Burchett's own admission of three prior OVI convictions constitutes sufficient evidence of the prior convictions.

{¶12} We recognize that, although the judgment entries submitted in the case sub judice are certified copies and do comply with Crim.R. 32(C), the State nevertheless presented insufficient evidence to prove that the "Jacob Burchett" identified in the entries is the same offender in this case. Trooper Stump did not provide evidence that the Jacob Burchett in the judgments of conviction is the same defendant. Stump testified that he first met Burchett on July 29, 2023 and had no personal knowledge of, or connection to, the previous cases. Stump did testify that the dates of the offenses in the LEADS

report matched with the license suspension dates in the judgment entries, but he did not provide any identifying information to connect the "Jacob Burchett" in the LEADS report to the Jacob Burchett in the judgment entries, such as his date of birth and social security number. Additionally, the State did not submit the LEADS report into evidence so that Stump's testimony, had it been sufficient to identify Burchett, constituted hearsay.

State v. Pelmear, 2022-Ohio-1534, ¶ 44 (6th Dist.) (an officer's testimony about a LEADS report is "a textbook example of hearsay" but is harmless error where the LEADS report is properly admitted into evidence); *State v. Smith*, 2024-Ohio-3344, ¶27 (6th Dist.); *State v. Justice*, 2024-Ohio-2574, ¶ 22, 27 (1st Dist.) (admission of officer's testimony about computer results of license plate search was plain error because it was "textbook" hearsay and the conviction reversed where it was the only evidence to support the conviction).

{¶13} However, our review does indeed reveal that, during his arrest, appellant did, in fact, admit to Trooper Stump that he had three prior OVI convictions. The State points out that appellant's admission should also be considered as evidence of appellant's prior convictions.

{¶14} In *Parma v. Benedict*, 2015-Ohio-3340 (8th Dist.) the court determined that the trial court erred by admitting into evidence a certified copy of a defective entry that did not

comply with Crim.R. 32(C). However, the Benedict court pointed out that a judgment entry of conviction is not the only method to establish a prior conviction. Instead, a prior conviction may be established by other means, including stipulation or admission. *Id.* at ¶18, quoting *State v. Gwen*, 982 N.E.2d 626. Similar to the case sub judice, Benedict admitted during his booking that he had a prior conviction and this statement confirmed the conviction reflected in the documents to establish his prior convictions. Consequently, the Benedict court held that the trial court's admission into evidence of the defective document constituted harmless error under Crim.R. 52(A) because, in light of Benedict's admission about his prior conviction under Evid.R. 801(D)(2)(a), the jury could conclude beyond a reasonable doubt that he had a prior OVI conviction. Here, Trooper Stump testified at trial that appellant admitted on camera during his arrest that he had three prior OVI convictions. We believe that appellant's admission was sufficient to allow the jury to conclude beyond a reasonable doubt that appellant has three prior OVI convictions. See, also, *State v. Harris*, 2017-Ohio-5594 (1st Dist.), *State v. Cranford*, 2019-Ohio-91 (4th Dist., Abele dissenting).

{¶15} Accordingly, based upon the foregoing reasons, we overrule appellant assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

Hess, J., dissenting,

{¶16} I respectfully dissent. I agree with the majority that the State failed to present sufficient evidence that the “Jacob Burchett” identified in the entries was the same offender as in this case. Trooper Stump did not provide evidence that the Jacob Burchett in the judgments of conviction is the same defendant. I also agree that Trooper Stump did not provide identifying information to connect the “Jacob Burchett” in the LEADS report to the defendant and, even if it had been sufficient, it constituted inadmissible hearsay. However, I disagree with the majority’s determination that the defendant’s admission that he had three prior OVI convictions was sufficient to constitute a stipulation or an admission that the three entries referring to Jacob Burchett was, in fact, the defendant.

{¶17} The majority relies upon *Gwen, infra*, and *Benedict, infra*, to find that Burchett’s admission constituted a stipulation that the OVI entries referred to him. However, in both cases the defendants’ admissions included sufficient details to connect them to the prior offenses; Burchett’s admission lacks that detail.

{¶18} In *State v. Gwen*, 2012-Ohio-5046, the defendant was convicted of a third-degree felony domestic violence offense based on two prior domestic violence convictions. Gwen challenged the enhancement of his domestic violence conviction

from a misdemeanor to a third-degree felony because he contended the State failed to provide sufficient proof of two prior domestic violence convictions. However, Gwen took the stand in his own defense, was handed two exhibits of prior judgment entries, and admitted that he was convicted of one of the two prior offenses. The appellate court found that the State had provided sufficient evidence of one of the two convictions because "Gwen testified in his own behalf and confirmed that he was convicted of domestic violence with regard to the journal entry at issue." *State v. Gwen*, 2011-Ohio-1512, ¶ 39 (9th Dist.). The appellate court affirmed his domestic violence conviction but reversed the enhancement of that offense from a fourth-degree felony to a third degree because there was only sufficient evidence of one prior domestic violence offense. *Id.* at ¶ 28, 55.

{¶19} The Supreme Court of Ohio affirmed the appellate court's judgment, finding that the State can prove a prior conviction by methods other than a certified copy of the entry of judgment of prior conviction, and the Court identified that a prior conviction may be proven by an offender's stipulation. *Gwen*, 2012-Ohio-5046, ¶ 14. Gwen's sworn trial testimony that one of the State's two exhibits was a conviction of domestic violence was sufficient to prove his prior conviction on one of the two domestic violence entries. *Id.* at ¶ 21.

{¶20} In *Parma v. Benedict*, 2015-Ohio-3340 (8th Dist.), Benedict appealed his conviction of OVI with a prior conviction because he contended that the December 2011 journal entry from a prior OVI conviction did not comply with Crim.R. 32(C) because it was not signed by the judge. The appellate court agreed that the entry was defective and should not have been admitted. However, citing *Gwen, supra*, the appellate court found that the State established Benedict's prior conviction by introducing the 2013 booking video. In the video, the patrolman stated that Benedict had a prior OVI conviction from "last year." In response, Benedict explained that the conviction was from "two years ago" in "December of 2011." The appellate court found, "Benedict's statements confirm the conviction reflected in the certified copy of the journal entry. Thus, Benedict's admission that he had a prior conviction in December 2011 was sufficient to render the prior conviction established." *Id.* at ¶ 19.

{¶21} Here, the majority relies upon *Benedict* and *Gwen* to conclude that Burchett's statement that he had three prior OVI convictions was sufficient to confirm the convictions reflected in the three journal entries. I disagree and find that the connection between Bruchett's statement and the journal entries to be too attenuated to provide the State's required proof. In the interior patrol car video Trooper Stump asked, "How many OVIs have you had that you're aware of?" Burchett answers,

"Three." Burchett provides no further information. He does not identify the dates, by month and year, of the prior OVIs so the convictions he admits to cannot be matched up with the three entries. In contrast, Benedict admitted he had one prior OVI in December 2011, which matched the December 2011 journal entry, and was sufficient to establish that the OVI occurred within the relevant time period. Therefore, *Benedict* is distinguishable on this basis. Unlike *Benedict*, we cannot say that Burchett's admission was sufficient to render any of the three prior convictions established. His admission provides no time frame. *Benedict* at ¶ 19. *Gwen* is distinguishable because *Gwen* gave sworn testimony at trial upon reviewing one of the State's two entries. *Gwen* testified that he was convicted of domestic violence as set forth in the entry. The Court found *Gwen*'s testimony to be a sufficient stipulation to prove the prior conviction. Here, Burchett did not testify on his own behalf and did not review the State's exhibits and admit that they were his convictions.

{¶22} We have neither a defendant's testimonial statement at trial, nor a defendant's admission on video to law enforcement that any of his OVI convictions occurred in the months and years set forth in the journal entries. Not only did Burchett not give the months and years of his prior OVIs, but he did not state that any of them were within ten years of the current offense.

See R.C. 4511.19(G)(1)(d) (offender must have previously been convicted of three or four OVIs "within ten years of the offense").

{¶23} I would sustain Burchett's sole assignment of error and reverse the trial court's judgment.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. Concurs in Judgment & Opinion
Hess, J.: Dissents with Dissenting Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.