[Cite as *State v. Neff*, 2025-Ohio-1171.]

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

STATE OF OHIO,	:	
	:	Case Nos. 23CA14
Plaintiff-Appellee,	:	23CA16
	:	23CA17
v.	:	23CA18
	:	
MICHAEL W. NEFF,	:	**DECISION AND JUDGMENT ENTRY**
	:	
Defendant-Appellant.	:	
	:	**RELEASED: 03/26/2025**

APPEARANCES:

Steven H. Eckstein, Washington Courthouse, Ohio, for appellant.

Brigham Anderson, Lawrence County Prosecuting Attorney, and Steven K. Nord, Assistant Lawrence County Prosecuting Attorney, Ironton, Ohio for appellee.

Wilkin, J.

{¶1} Appellant, Michael W. Neff ("Neff"), appeals four judgment entries from the Lawrence County Court of Common Pleas in: (1) Case No. 20-CR-188, breaking and entering in violation of R.C. 2911.13, a fifth-degree felony; (2) Case No. 20-CR-341, failure to appear in court on September 2, 2020, in violation of R.C. 2937.99(A) and (B), a fourth-degree felony; (3) Case No. 22-CR-164, failure to appear in court on March 24, 2021, in violation of R.C. 2937.99(A) and (B), a fourth-degree felony; and (4) Case No. 22-CR-204 tampering with evidence in violation of R.C. 2921.12(A)(1), a third degree-felony, and vandalism in violation of R.C. 2909.05(B)(2), a fifth-degree felony. The cases were tried together, but continue to have separate case numbers.

{¶2} In his first assignment of error, Neff asserts that his convictions for tampering with evidence, vandalism, and two failure to appear counts are not supported by sufficient evidence. In his second assignment of error, Neff asserts that his convictions for tampering with evidence, vandalism, two failure to appear counts, and breaking and entering are against the manifest weight of the evidence.

{¶3} We find that all five of Neff's convictions are supported by the manifest weight of the evidence. This finding renders moot Neff's first assignment of error, because a finding that Neff's five convictions are supported by the manifest weight of the evidence necessarily means those convictions are supported by sufficient evidence. Consequently, we overrule both of Neff's assignments of error and affirm the trial court's four judgment entries of conviction.

BACKGROUND

{¶4} On June 8, 2020, the State filed an indictment charging Neff with breaking and entering and attempted burglary in Case No. 20-CR-188. The State alleged that on March 28, 2020, Neff trespassed on property located at 36 Township Rd. in Lawrence County, Ohio, and used force to break into an unoccupied structure, with the purpose of committing a theft or any felony offense. On August 5, 2020, Neff pleaded not guilty to both offenses. The court set a pre-trial for September 2, 2020.

{¶5} Neff failed to appear for the September 2, 2020 pre-trial in Case No. 20-CR-188. Therefore, the court issued a capias for the Lawrence County Sheriff to arrest Neff.

{¶6} On September 25, 2020, the State filed an indictment in Case No. 20-CR-341 charging Neff with failing to appear at the September 2, 2020 pre-trial hearing in Case No. 20-CR-188. Neff pleaded not guilty.

{¶7} Cases 20-CR-188 and 20-CR-341 were set for a pre-trial on March 24, 2021. However, Neff failed to show at the March 24, 2021 pre-trial. The next day, the court issued a warrant for Neff's arrest.

{¶8} On May 25, 2022, the State filed an indictment in Case No. 22-CR-164 charging Neff with failing to appear at the March 24, 2021, pre-trial hearing. On June 1, 2022, Neff pleaded not guilty. The court set trial for July 28 and 29, 2022, for all three cases. The court set bond at $25,000 and required Neff to wear a GPS ankle monitor. The court also set a "final offer" pre-trial for July 6, 2022.

{¶9} On June 22, 2022, the State charged Neff with tampering with evidence and vandalism for removing and damaging the GPS monitor that had been attached to his ankle in Case No. 22-CR-204.

{¶10} Neff again failed to appear for the July 6th hearing. The court canceled the July 28th trial date and issued another capias for Neff's arrest.

{¶11} At a November 16, 2022 hearing, Neff pleaded not guilty to the tampering with evidence and vandalism charges in Case No. 22-CR-204.

Trial

{¶12} On March 6, 2023, all four of Neff's cases were tried together before a jury. However, prior to opening arguments, the attempted burglary charge was dismissed from Case No. 20-CR-188. Evidence on the remaining five charges was presented to the jury, starting with the breaking and entering charge.

{¶13} The State's first witness was Officer Steven Woodyard with the Proctorville Police Department. Officer Woodyard testified that on March 28, 2020, he was called to investigate a burglary in progress at a property in Lawrence County, Ohio. When he arrived at the scene, Officer Woodyard came into contact with Neff and another individual inside the garage at that property. Neff told Officer Woodyard that he had permission to be in the garage. Officer Woodyard stated that Neff appeared to be "pilfering" through junk, including "junk metal." He stated there was a car with an open trunk wherein there were two buckets that contained chains. Because Officer Woodyard discovered that the residence was just outside the police department's jurisdiction, a sheriff's deputy arrived, took over the case, and arrested Neff.

{¶14} The State's next witness was Monty Nichols, who lived next to the property subject to the investigation herein. Nichols stated that on the day of the incident, he was outside and saw a "car pull up, cut through the field, and go in between the house, the back of the house, and the building that [he] did not recognize." Nichols knew the owner of the house, but did not recognize either of the men in the car so he walked over to his neighbor's property and asked them what they were doing. Neff told Nichols that he was the property owner's cousin

and they had been given permission to take the transmission from an abandoned car sitting on the property. Nichols testified that subsequently he saw one of the men using a "long screwdriver" trying to get into the back door of the house. He then told his fiancée to call the police. Nichols identified Neff as one of the men on his neighbor's property.

{¶15} The State's next witness was Michael Johnson. He testified that he was the owner of the property as the executor of his mother's estate, which belonged to his mother before she died. Johnson also testified that Neff was his cousin's son. Johnson stated that he was working when the police called and reported the attempted burglary and said that they had Neff in the back of their car. Johnson testified that Neff did not have permission to be on the property or take anything from the property, including the transmission from the abandoned car. Johnson testified that he observed the rubber around the sliding glass door of the home was "tore to pieces[,]" which he had to replace. He also indicated that there were valuable items in the garage including, an air compressor, a chain hoist set, and a heavy engine stand. Johnson also testified that he removed his "dad's come-along and chains from the trunk of Neff's car and put it back in the building where it was[.]"[1]

{¶16} The State then presented evidence of Neff's failure to appear at the two court hearings. The State's sole witness pertaining to the failure to appear charges against Neff was Bob Blankenship, who was the bailiff with the Lawrence County Court of Common Pleas. As a bailiff, Mr. Blankenship

[1] A "come-along" is a "small portable winch usually consisting of a cable attached to a hand-operated ratchet." https://www.merriam-webster.com/dictionary/come-along

manages the court proceedings. Part of his job is checking in a defendant for his or her proceeding. Each defendant is marked as "here" if he or she is present, or as a "no show" if they do not appear for their proceeding. Mr. Blankenship maintained that he checks several times and different locations in the court before marking a defendant as a no show.

{¶17} The State asked Mr. Blankenship about Neff's presence at the September 2, 2020, pre-trial hearing. Referring to his notes, Mr. Blankenship testified that Neff was a "no show" for the hearing.

{¶18} The State also asked Mr. Blankenship about Neff's presence at the March 24, 2021, pre-trial hearing. Mr. Blankenship testified that his notes showed that Neff also failed to appear at that hearing.

{¶19} On cross-examination, Mr. Blankenship testified that he was unaware of whether Neff's attorney informed Neff of these court dates. However, on redirect examination, he confirmed that the court always advises the parties and their attorneys of the next hearing.

{¶20} Finally, the State addressed Neff's convictions for vandalism and tampering with evidence. The State's first witness was Melissa McCloud, who was an employee of the Lawrence County Adult Probation Department. She testified that she is "over the [Intensive Probation] department." This department supervises high-level felonies, including the monitoring of GPS monitors, if applicable. If ordered, a GPS monitor is attached to the offender's ankle. The probation department can then track the offender from "traces" that occur every minute, which show the offender's location. The monitor can only be removed

with a special tool, and only the probation department has the authority to remove it.

{¶21} Ms. McCloud testified that on June 1, 2022, the probation department placed a GPS monitor on Neff's ankle. Part of the agreement to be monitored by the GPS device was that it must not be tampered with, and doing so could result in immediate arrest and additional charges. After the monitor was attached to Neff and he was released for treatment, Ms. McCloud testified she never saw him again. On June 2, 2022, the department chief received a "tamper alert" from Neff's monitor, which usually means that the offender is trying to remove it. Fiber optics inside the strap that hold the monitor on the leg, if disrupted, for example, by being cut, sends a tamper alert. The signal showed that Neff was in Huntington, West Virginia at the time. As evidenced by its bar code, the monitor attached to Neff was found by the probation department on 8th Avenue in Huntington, West Virginia in a storm drain. The strap had been cut.

{¶22} The State's next witness was Sergeant Edward Spears who was employed with the Bureau of Community Corrections. He supervises the caseload for pre-trial services and treatment in lieu of conviction cases and is responsible for the recovery of GPS monitors. Similar to McCloud's testimony, Sergeant Spears stated that the monitor is tracked by a GPS satellite. If the monitor is tampered with, then typically the monitoring company contacts the "on call officer." After being informed that a tamper alert was received from Neff's monitor, Sergeant Spears headed for Huntington, West Virginia.

{¶23} Sergeant Spears stated that Neff's treatment facility, Hometown Recovery, notified the on-call officer that Neff had left the facility without permission. As Sergeant Spears arrived in Huntington, officers found Neff's monitor in a storm drain. Sergeant Spears testified that the strap on the monitor had been cut. Sergeant Spears maintained that the tracings from the monitor showed that Neff left the Hometown Recovery facility and traveled to Huntington, West Virginia, where he traveled extensively. At the conclusion of Sergeant Spears' testimony, the State rested.

{¶24} The defense presented no witnesses or evidence.

{¶25} After being instructed on the law by the judge, the jury retired to deliberate. The jury found Neff guilty on all five criminal counts: (1) breaking and entering, (2) failure to appear on March 24, 2021, (3) failure to appear on September 2, 2020, (4) vandalism, and (5) tampering with evidence. The trial court then sentenced Neff to an aggregate prison term of 72 months.

{¶26} It is these convictions that Neff appeals. He asserts two assignments of error.

ASSIGNMENTS OF ERROR

I. DEFENDANT-APPELLANT'S CONVICTIONS FOR TAMPERING WITH EVIDENCE, VANDALISM, AND FAILURE TO APPEAR ARE NOT BASED UPON SUFFICIENT EVIDENCE THEREBY DENYING HIM HIS DUE PROCESS AND A FAIR TRIAL RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION.

II. DEFENDANT-APPELLANT'S FIVE CONVICTIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

A. Arguments

{¶27} In his first assignment of error, Neff asserts that there was insufficient evidence to support his convictions for tampering with evidence, vandalism, and his two counts for failure to appear.

{¶28} Neff argues that the State had to prove that he cut the strap on the GPS tracking device for purposes of his tampering with evidence and vandalism convictions. He claims there was no direct evidence to show that he was the one who cut the strap on the GPS tracking device. Therefore, he maintains there was insufficient evidence to support his tampering with evidence and vandalism convictions.

{¶29} Neff also argues that the State was required to show that he knew of the hearing dates for purposes of his failure to appear convictions. However, he claims there was no direct evidence that he was aware of those dates. Therefore, he claims, there was insufficient evidence to support his failure to appear convictions.

{¶30} In his second assignment of error, Neff asserts that all five of his convictions (tampering with evidence, vandalism, two failure to appear counts, and breaking and entering) are against the manifest weight of the evidence.

{¶31} In asserting that his convictions for tampering with evidence and failure to appear are not supported by substantial evidence, he again argues there was no evidence that *he* cut the strap on the GPS monitor attached to his ankle. Therefore, he claims that his convictions for tampering with evidence and vandalism are against the manifest weight of the evidence.

{¶32} In arguing that his convictions for failure to appear are not supported by substantial evidence, he again largely relies on his argument above that his convictions are not supported by sufficient evidence. He asserts that there was no "direct" evidence that he knew of the hearing dates. Neff further maintains that the notion that the court always tells defendants when to appear was not substantial evidence of the culpable mental state applicable to a failure to appear offense. The jury may not draw an inference from this circumstantial evidence. Therefore, his convictions for failure to appear are against the manifest weight of the evidence.

{¶33} Finally, Neff claims that there was no substantial evidence to support his breaking and entering conviction. Neff asserts that the witness did not see him place the chains in the back of the car's trunk, and it was daylight at the time. Neff argues he did not act with stealth or deception because he "did not try to run away, he was very cooperative, he was dressed in normal clothing, did not have on a face-mask or gloves, the car's license plate was properly displayed on the vehicle, [and] the car was not parked down the street." Neither Neff nor the man with him tried to hide their identity. Even after speaking to the neighbor, Neff remained on the property. Lastly, Neff contends that no one saw him tamper with the door. Therefore, Neff maintains that his conviction for breaking and entering was against the manifest weight of the evidence.

{¶32} Recognizing that if a conviction is found to be supported by the manifest weight of the evidence, it typically means that it is also supported by

sufficient evidence. The State maintains that Neff's convictions are supported by the manifest weight of the evidence.

{¶33} Regarding Neff's tampering with evidence and vandalism convictions, the State noted that Neff had signed an agreement that any tampering with the monitor could result in Neff's immediate arrest, bond forfeiture, and filing of additional charges. The agreement also prevented Neff from leaving Ohio, and if he did, the computer printout showing his location could be used against him in court. Neff's monitor showed that he left Ohio and entered West Virginia. At trial, the State presented Neff's GPS monitor that was recovered from West Virginia. Its strap was severed. Thus, the State maintained that Neff's convictions for vandalism and tampering with evidence are supported by the manifest weight of the evidence.

{¶34} With regard to Neff's two failure to appear convictions, the State maintains there is significant evidence that he knew the date of the hearings, but still failed to attend the hearings.

{¶35} The State argues that at each hearing a copy of the entry with the date and time of the next hearing is provided to the defendant and the State. The State submitted an August 5, 2020 entry that showed the next hearing was September 2, 2020, which was the first hearing that Neff missed. The State also submitted a January 27, 2021 entry that showed the next hearing date was March 24, 2021, which is the second hearing that Neff missed.

{¶36} The State further noted that the court's bailiff, Mr. Blankenship, testified that he had a system for calling cases and noting the attendance or

absence of defendants. Mr. Blankenship testified that his notes indicated on September 2, 2020 and March 24, 2021, that Neff's counsel was present, but Neff was not.

{¶37} The State also claims that "the transcripts from the multiple pre-trial conferences" establish that the trial court directly advised Neff of the September 2, 2020 hearing and the March 24, 2021 hearing.

{¶38} Therefore, the State maintains that Neff's failure to appear convictions are supported by the manifest weight of the evidence.

{¶39} Finally, the State maintains the evidence supports that Neff committed breaking and entering, which provides "no person by force, stealth or deception, shall trespass in an unoccupied structure, with purpose to commit therein any theft offense . . ., or any felony."

{¶40} Nichols, the neighbor, observed a car he did not recognize drive through the field onto the property in question. He witnessed Neff and another man go into the garage and Neff use a screwdriver attempting to break in the back door, so he called 911. Officer Woodyard was sent to investigate a burglary in progress. When Officer Woodyard arrived, Neff was in the garage "pilfering" through "junk" and "junk metal." Officer Woodyard was deceived by Neff who told the officer that he had permission to be in the garage. Officer Woodyard stated that Neff's car was on the property with an open trunk that contained two buckets of metal junk.

{¶41} Finally, Michael Johnson testified that he was the executor of the estate of his mother, who had owned the property in question. He stated that

Neff did not have permission to be on the property. He also testified that Neff had stolen heavy chains and a steel "come along" from the property.

{¶42} Thus, the State maintains that Neff's conviction for breaking and entering was supported by the manifest weight of the evidence.

B. Law

1. Standard of Review

{¶43} " 'The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different.' " *State v. Brooker*, 2007-Ohio-588, ¶ 6, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). "Sufficiency is a test of the adequacy of the evidence, while '[w]eight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other * * * *." ' " (Brackets and ellipses sic.) *Id*., quoting *Thompkins* at 386, 387, quoting Black's Law Dictionary (6th Ed.1990).

{¶44} "Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency." *State v. Gravely*, 2010-Ohio-3379, ¶ 46 (10th Dist.), citing *State v. Braxton,* 2005-Ohio-2198, ¶ 15 (10th Dist.), citing *State v. Roberts*, 1997 WL 600669 (9th Dist. Sept. 17, 1997). " '[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.' " *Id.*, quoting *Braxton*. Therefore, similar to the court of appeals in *Gravley*, we will "first

examine whether appellant's convictions are supported by the manifest weight of the evidence." *Id*., citing *State v. Sowell,* 2008-Ohio-3285, ¶ 89 (10th Dist.).

{¶45} A manifest weight of the evidence challenge examines the "inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other." *State v. Gonz*, 2024-Ohio-5885, ¶ 11 (4th Dist.), quoting State *v. Barnett,* 2012-Ohio-2372, ¶ 14 (12th Dist.).

> In determining whether a criminal conviction is against the manifest weight of the evidence, we 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 reversal of the conviction is necessary. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119.

State v. Sines-Riley, 2024-Ohio-2860, ¶ 22 (4th Dist.).

"To satisfy this test, the State must introduce substantial evidence on all the elements of an offense, so that the jury can find guilt beyond a reasonable doubt." *Id*., citing *State v. Eskridge*, 38 Ohio St.3d 56, (1988), syllabus; *State v. Harvey*, 2022-Ohio-2319, ¶ 24 (4th Dist.). "Because a trier of fact sees and hears the witnesses, appellate courts will also afford substantial deference to a trier of fact's credibility determinations." *State v. Schroeder*, 2019-Ohio-4136, ¶ 61 (4th Dist.).

2. Evidence

{¶46} "The elements of an offense may be established by ' "direct evidence, circumstantial evidence, or both. Circumstantial and direct evidence

are of equal evidentiary value." ' " *State v. Howard*, 2024-Ohio-1409, ¶ 41 (4th Dist.), quoting *State v. Fannon*, 2018-Ohio-5242, ¶ 100 (4th Dist.), quoting *State v. Swain*, 2002 WL 146204, *8 (4th Dist. Jan. 23, 2002). "Circumstantial evidence is ' " ' [t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved.' " ' " (Brackets sic.) *State v. Shields*, 2023-Ohio-2331, ¶ 34 (4th Dist.), quoting *State v. Dodson*, 2019-Ohio-1465, ¶ 11 (4th Dist.), quoting *State v. Nicely*, 39 Ohio St.3d 147, 150 (1988), quoting Black's Dictionary (5th Ed. 1979). Consequently, a defendant may be convicted solely on the basis of circumstantial evidence, which is not less probative than direct evidence. *Nicely* at 151.. However,

> "A trier of fact may not draw '[a]n inference based * * * entirely upon another inference, unsupported by any additional fact or another inference from other facts[.]' " 'When an inference, which forms the basis of a conviction, is drawn solely from another inference and that inference is not supported by any additional facts or inferences drawn from other established facts, the conviction is improper.' " However, the rule against inference-stacking "is 'extremely limited' and does not prohibit drawing parallel inferences in combination with additional facts or drawing multiple, separate inferences from the same facts." (Brackets sic.)

Howard at ¶ 42, quoting *Shields*.

{¶47} " ' "It is well settled that in order to support a conviction, the evidence must establish beyond a reasonable doubt the identity of the defendant as the person who actually committed the crime at issue." ' " *State v. Jones*, 2024-Ohio-4538, ¶ 12 (3rd Dist.), quoting *State v. Missler*, 2015-Ohio-1076, ¶ 13 (3d Dist.), quoting *State v. Johnson*, 2014-Ohio-1226, ¶ 27 (7th Dist.). However,

" '[t]here is no requirement that a defendant be specifically identified as the perpetrator of a crime by a witness testifying in court to uphold his conviction for that crime.' " *Jones* at ¶ 14, quoting *State v. Littlejohn*, 2015-Ohio-875, ¶ 37 (8th Dist.). "Rather, ' "direct or circumstantial evidence is sufficient to establish the identity of a defendant as the person who committed a crime." ' " *Id*., quoiting *Missler* at ¶ 13, quoting *State v. Collins*, 2013-Ohio-488, ¶ 19 (8th Dist.).

C. Analysis

1. Failure to Appear Convictions

{¶48} R.C. 2937.99 defines the criminal offense of failure to appear, which in pertinent part states:

> (A) No person shall fail to appear as required, after having been released pursuant to section 2937.29 of the Revised Code. Whoever violates this section is guilty of failure to appear and shall be punished as set forth in division (B) or (C) of this section.
> (B) If the release was in connection with a felony charge or pending appeal after conviction of a felony, failure to appear is a felony of the fourth degree.

{¶49} Because R.C. 2937.99 does not specify a mental state and does not expressly indicate that it is intended to be a strict liability offense, recklessness is the applicable mental state. *State v. Fitzpatrick*, 2001-Ohio-2619, *6 (4th Dist.); R.C. 2901.21(B).

> A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

R.C. 2901.22(C).

{¶50} It is undisputed that Neff failed to show up for the pre-trials on September 2, 2020 and on March 3, 2021. Neff claims there is no direct evidence that he knew of the two hearing dates. He argues that the jury was not permitted to draw an inference from the circumstantial evidence that Neff knew of the two court dates because the court always informs defendants of future court dates. Thus, Neff alleges, impermissible inference stacking.

{¶51} There is no need to address Neff's improper inference-stacking argument because there is evidence that the trial court orally informed Neff of the need to attend both court proceedings in question, which Neff acknowledged. In the prior hearings in each respective case, the court informed Neff of the date and time of the next pre-trial hearing as evidenced by the exchanges below.

{¶52} At Neff's arraignment in Case No. 20-CR-188, the following exchange occurred:

COURT:	That's what I told them. So, Mr. Neff, while they're signing this, O.R. bond is set at $10,000.00. I need you to do three things for me, show up at the court when you're supposed to be here . . .
DEFENDANT:	Yes sir.
COURT:	Fail to show, show up late . . . I'm going to put a cash security component on the bond that's probably going to keep you incarcerated, which will ensure to me . . your appearance . . . at future proceedings, all right.
DEFENDANT:	I understand, yes sir.
COURT:	. . . Be back here September 2, for your next pre-trial, 8:30 a.m. okay?
DEFENDANT:	Thanks, your Honor.

COURT: All right. I will see you on the 2nd of September.

Neff failed to appear for the September 2, 2020 pre-trial hearing.

{¶53} At a pre-trial hearing for Case Nos. 20-CR-188 and 20-CR-341, the following exchange occurred:

COURT: Perfect. Final pretrial?

COURT ASSISTANT: It'll be the 24th.

COURT: March 24 will be the final pretrial. And then let's get back together between now and the, and that gives you an opportunity to get your motion to consolidate, Mr. Nord.

COURT ASSISTANT: March 3rd.

COURT: Is that good for everybody? March 3rd? . . . All right, so Mr. Neff, I will see you back on March 3rd, 8:30 a.m. for pretrial.

DEFENDANT: Yes, sir.

Neff failed to appear at the March 3, 2021 pre-trial hearing.

{¶54} The State had to prove that Neff was at least reckless in failing to appear for the pre-trials. The evidence shows that Neff had actual knowledge of the September 2, 2020 and March 24, 2021 pre-trial dates, and still failed to attend either. Therefore, we find that in failing to appear at those hearings, Neff was reckless because he acted with heedless indifference to the consequences.

{¶55} Therefore, we find that Neff's convictions for failure to appear are supported by substantial evidence. Accordingly, both convictions for failing to appear are supported by the manifest weight of the evidence.

2. Vandalism and Tampering with Evidence Convictions

{¶56} With regard to the cutting of the band that held the GPS monitor on Neff's leg, Neff was convicted of tampering with evidence under R.C. 2921.12, which in pertinent part, states:

> (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
> (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation

{¶57} Neff was also convicted of vandalism under R.C. 2909.05, which in pertinent part, states:

> (B)(1) No person shall knowingly cause physical harm to property that is owned or possessed by another, when either of the following applies:
> . . .
> (2) No person shall knowingly cause serious physical harm to property that is owned, leased, or controlled by a governmental entity. A governmental entity includes, but is not limited to, the state or a political subdivision of the state, a school district, the board of trustees of a public library or public university, or any other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

{¶58} It is undisputed that the strap on the GPS monitor was severed. And Neff does not argue that this act is not vandalism or tampering with evidence. Rather, Neff's only argument is that his convictions for both these offenses are against the manifest weight of the evidence because there is no evidence that *he* was the person who cut the monitor's strap. Although there is no direct evidence of Neff cutting the strap, we find that there is circumstantial

evidence from which that inference can be drawn as we set out below. *See Jones*, 2024-Ohio-4538, at ¶ 14 (3d Dist.).

{¶59} The GPS monitoring device was attached to Neff's ankle with a strap that had a closure that could only be opened by the Department of Probation using a special tool without damaging it. The evidence also shows that Neff left his court-ordered treatment in Ohio before it was completed and went to Huntington, West Virginia. This was contrary to the agreement he signed in exchange for being allowed to be on bond while wearing the monitoring device, which prohibited him from leaving Ohio. Furthermore, the evidence shows the monitoring device was found with a severed strap in a storm drain in Huntington, West Virginia. This is the city to which Neff was tracked before the tamper alert was triggered. From these facts, we find it reasonable to infer for purposes of Neff's vandalism and tampering with evidence that *he* was the person who severed the strap because he had "access" to the monitor and the motive to remove it to avoid being tracked and punished for leaving the state.

{¶60} Therefore, we find there is substantial evidence that Neff was the person who severed the strap on the GPS monitor. Accordingly, Neff's convictions for vandalism and tampering with evidence convictions are supported by the manifest weight of the evidence.

3. Breaking and Entering Conviction

{¶61} Neff was convicted of breaking and entering, set out in R.C. 2911.13(A), which states: "No person by force, stealth, or deception, shall trespass in an unoccupied structure, with purpose to commit therein any theft

offense, as defined in section 2913.01 of the Revised Code, or any felony." Because the terms force, stealth and deception, which modify the term trespass, are in the disjunctive, proof of only one of these is required to support a breaking and entering conviction. *See State v. Coburn*, 84 Ohio App.3d 170, 173 (4th Dist.1992).

{¶62} " 'Force' is defined as 'any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.' " *State v. King*, 2022-Ohio-4616, ¶ 30 (4th Dist.), quoting R.C. 2901.01(A)(1). " '[A]ny effort physically exerted' satisfies the element of force." *Id*., quoting *State v. Johnson,* 2017-Ohio-5498, ¶ 21 (2d Dist.), quoting *State v. Snyder*, 2011-Ohio-175, ¶ 18 (9th Dist.). "[I]t is well established that '[t]he opening of a closed door, even if unlocked, falls under the definition of force.' " (Second brackets sic.) *State v. Lucas,* 2024-Ohio-842, ¶ 59 (8th Dist.) quoting *State v. Knuckles,* 2005-Ohio-6345, ¶ 24 (8th Dist.); *King* at ¶ 30.

{¶63} "Although the Ohio Revised Code does not define the word 'stealth,' courts have defined the term as " ' "any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within a residence of another without permission." ' " *King* at ¶ 31, quoting *State v. Ward,* 85 Ohio App.3d 537, 540 (3d Dist.1993), quoting *State v. Lane*, 50 Ohio App.2d 41, 47 (10th Dist.1976). "[T]he fact that an incident occurs in broad daylight does not necessarily preclude evidence of stealth. *Id*., citing *State v. Johnson* 2017-Ohio-5498, ¶ 20 (2d Dist.).

{¶64} Finally, the term deception is defined R.C. 2901.13, which defines terms used to define criminal offenses. It states:

> Deception means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

"In order to be guilty of criminal trespass through deception, a defendant must be aware either that a false impression is created or perpetuated or, knowing that the victim holds a false impression, withholds or prevents the victim from obtaining information to the contrary." *In re Meachem*, 2002-Ohio-2243, ¶ 19 (10th Dist.), citing *Mayfield Hts. v. Riddle*, 108 Ohio App.3d 337, 341-342 (8th Dist.1995).

{¶65} The indictment alleged that Neff committed the breaking and entering offense with the purpose of committing a theft. R.C. 2913.02 defines theft as follows:

> (A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:
> (1) Without the consent of the owner or person authorized to give consent;
> (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
> (3) By deception;
> (4) By threat;
> (5) By intimidation.
> (B)(1) Whoever violates this section is guilty of theft.

{¶66} Neff claims that his conviction for breaking and entering was against the manifest weight of the evidence. Neff asserts that no one saw him place the

chains in the back of the car or tamper with the door. Neff claims he was very cooperative, he did not try to run, he was dressed in normal clothes, he was there during the day, and his car was not parked down the street. Neff further argues that neither him nor the man with him tried to hide their identity, and, even after speaking with the neighbor, Neff remained on the property. Thus, Neff appears to suggest that his conviction for breaking and entering is against the manifest weight of the evidence because the evidence shows he did not act with "stealth" the day of the incident.

{¶67} Some of the circumstances that Neff cites are not necessarily contrary to acting with stealth. *See* e.g. *King*, 2022-Ohio-4616, ¶ 30 ("[T]he fact that an incident occurs in broad daylight does not necessarily preclude evidence of stealth). However, even for the sake of argument, if we agreed with Neff's argument, we find that there is substantial evidence that Neff acted with force and deception for purposes of his breaking and entering conviction. The dwelling herein was not occupied at the time of the breaking and entering. Neff told the police officer that he had permission to be on the property. However, Johnson, the executor of his mother's estate, who owned the property in question, testified that he did not give Neff permission to be on the property or to take anything from the property, including the transmission from the abandoned car. We find this to be substantial evidence that Neff acted deceptively.

{¶68} Johnson also testified that he never left the garage door open when he was not there. Johnson indicated that there were valuable items in the garage, including, an air compressor, a chain hoist set, and a heavy engine stand

in the garage. Johnson further stated that he removed his "dad's come-along and chains from Neff's car and put it back in the building where it was[.]" Additionally, the neighbor, who called the police, testified that he saw Neff using a long screwdriver attempting to pry open the door to the house, and an inspection of the door revealed that the area around it was damaged. We find this to be substantial evidence that Neff acted with force.

{¶69} There were also facts from which a jury could infer that Neff was committing theft. There was testimony that there were valuable items in the garage. Johnson testified that he removed his father's come-along and some chains from the trunk of Neff's car and placed them back in the building. And, Nichols testified that Neff told him that he was there to take the transmission from the abandoned car on the property. However, Johnson testified that he had no authority to take the transmission.

{¶70} Therefore, we find that there is substantial evidence to support Neff's breaking and entering conviction, i.e., there is substantial evidence that Neff acted with force and deception to trespass in an unoccupied structure to commit theft. Accordingly, after our review of the entire record, weighing the evidence and all reasonable inferences, considering the credibility of witnesses, and resolving conflicts in the evidence, we do not find that the jury clearly lost its way in convicting Neff of breaking and entering. Thus, there is no manifest miscarriage of justice that requires reversal of the conviction.

{¶71} Having found that all five of Neff's criminal convictions are supported by the manifest weight of the evidence, it also means that we have

necessarily concluded that all five convictions are supported by sufficient evidence. Consequently, we find no need to review Neff's first assignment of error, which asserts that there is insufficient evidence to support his convictions for failure to appear, vandalism, and tampering with evidence because that issue is moot.

CONCLUSION

{¶72} Having overruled Neff's second assignment of error and finding his first assignment of error to be moot, we affirm the trial court's judgment entries convicting Neff for tampering with evidence, vandalism, failing to appear on two separate occasions, and breaking and entering.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and 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.

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, 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.