

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

STEVEN P. MCGREW,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 24 CO 0022**

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Application for Reconsideration  
Motion to Certify a Conflict

**BEFORE:**

Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

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**JUDGMENT:**

Denied.

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*Atty. Vito J. Abruzzino*, Columbiana County Prosecutor and *Atty. Danielle Menning*,  
Assistant Prosecutor, for Plaintiff-Appellee

*Atty. Michael P. Dunham*, for Defendant-Appellant.

Dated: March 5, 2025

**PER CURIAM.**

{¶1} Appellant Steven McGrew has filed a “petition for reconsideration,” and in the alternative, a motion to certify a conflict concerning our Opinion in *State v. McGrew*, 2025-Ohio-333 (7th Dist.). Regarding the reconsideration request, Appellant contends the state failed to provide the requisite notice of its intent to use “bad acts” evidence prior to trial. As to the alternative motion to certify a conflict, Appellant claims our Opinion conflicts with the law contained in *State v. Nicholson*, 2022-Ohio-2037 (8th Dist.). For the reasons that follow, Appellant’s arguments are without merit and both his application for reconsideration and motion to certify a conflict are denied.

Factual And Procedural History

{¶2} For purposes of these filings, an in-depth description of the facts is unnecessary and we will address only those necessary to the issues at hand. Appellant was convicted of failure to comply with an order of a law enforcement officer following a lengthy police chase. Patrolman Michael Garber was able to identify Appellant, with whom he was familiar, because lighting in the area on the night of the incident allowed him to see inside Appellant’s vehicle and observe him in the driver’s seat before the chase commenced. In addition, Patrolman Garber received information from dispatch which corroborated his identification of Appellant, including that the vehicle belonged to Appellant’s mother who had reported the vehicle as stolen by Appellant. Appellant fled once Patrolman Garber initiated a traffic stop of the vehicle, as he learned Appellant was under a driver’s license suspension and was the subject of outstanding bench warrants.

{¶3} On direct appeal, Appellant raised an array of issues, including a challenge to Patrolman Garber’s identification and certain evidence obtained through dispatch concerning prior bad acts. We determined Patrolman Garber’s identification of Appellant constituted sufficient identification evidence, as Ohio law provides that witness identification provides sufficient evidence of the perpetrator’s identity. We explained that once that identification is made, the analysis shifts to a manifest weight review. As a plethora of record evidence supported Patrolman Garber’s identification, the identification of Appellant was also not against the manifest weight of the evidence. Regarding prior bad acts evidence, the vast majority of this evidence against Appellant was gathered as part of the police investigation. It established why Patrolman Garber attempted to initiate a traffic stop of the vehicle. The remaining evidence was actually introduced by defense counsel’s own questioning of a witness. Accordingly, we affirmed Appellant’s convictions in *State v. McGrew*, 2025-Ohio-333 (7th Dist.).

{¶4} Appellant’s listed assignments of error and his arguments do not follow any appropriate format. For ease of understanding, we have regrouped his assignments into two distinct analyses.

#### Application for Reconsideration

{¶5} “The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.” *Columbus v. Hodge*, 37 Ohio App.3d 68 (10th Dist. 1987), paragraph one of the syllabus.

Motion to Certify Conflict

{¶6} Motions to certify a conflict are governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

{¶7} Under Ohio law, “there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper.” *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594 (1993), paragraph one of the syllabus. To that end, we have adopted the following requirements from the Supreme Court:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be “upon the same question.” Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

*Id.* at 596.

ASSIGNMENT OF ERROR NO. 1 (Reconsideration)

That this Honorable Court erred when overruling Assignment of Error 4 because the State failed to give notice of intent to introduce character evidence before trial as required under the due process clause of US Con. Amend. V, US Con. Amend. XIV, Ohio Con. Art. I, and, Evid.R. 404(B)(2).  
(Cleaned up.)

{¶8} Appellant contends that the state must provide notice of its intent to use other bad acts evidence prior to trial to allow a defendant to preempt such testimony through a motion in limine. Appellant complains that he was prevented from filing a motion in limine, as he did not receive notice of the state's intent to use that evidence.

{¶9} The state has failed to address the issue as it pertains to the application for reconsideration.

{¶10} It is readily apparent from his filing that Appellant simply disagrees with the logic employed by this Court. In our Opinion, we clearly stated that the "bad acts" evidence was offered at trial for purposes other than to show that Appellant acted in conformity with a specific character. For example, the evidence regarding Appellant's multiple license suspensions, his mother's stolen vehicle report, and Appellant's arrest warrants were introduced to show why Patrolman Garber attempted to initiate a traffic stop of his vehicle. This type of evidence merely allows the jury to follow the steps taken by police officers in their investigation. Without such evidence, the jury would not be able to understand why officers sought to initiate a traffic stop of the vehicle.

{¶11} The evidence pertaining to Appellant’s previous attempts, in other jurisdictions, to flee from police officers was actually elicited by defense counsel’s own line of questioning, opening the door for the state to further explore that information. To the extent any of the testimony exceeded what may have been necessary, and was admitted erroneously, Appellant suffered no harm due to the overwhelming amount of other evidence implicating him in this case. In our analysis, we fully addressed Appellant’s concerns and in his reconsideration request he simply disagrees with our logic and conclusion.

{¶12} Accordingly, Appellant’s application for reconsideration is overruled.

ASSIGNMENT OF ERROR NO. 2 (Conflict)

That there is insufficient evidence to convict a defendant on the issue of identification when no reasonable jury would find that the witness had a sufficient amount of time to identify the defendant.

{¶13} Appellant contends that our Opinion is in conflict with *State v. Nicholson*, 2022-Ohio-2037 (8th Dist.). We note that Appellant misunderstands both our Opinion and the case on which he relies in his assertion that a conflict exists. Appellant erroneously claims we held that the only valid attack on the element of identification is through a manifest weight of the evidence argument. To the contrary, we did not limit an attack on identification evidence in this regard. We recognized that Appellant first attacked the sufficiency of the identification evidence against him. We explained, however, that under Ohio law, a witness’ identification, if believed, provides sufficient evidence of identification. An attack on the credibility or value of that identification

testimony, however, raises a challenge to the manifest weight of that evidence. See *State v. Hill*, 2024-Ohio-2744, ¶ 31 (7th Dist.) (“While identity is an element that must be proven by the state beyond a reasonable doubt, the credibility of witnesses and their degree of certainty in identification are matters affecting the weight of the evidence.”). Here, Patrolman Garber identified Appellant as the driver of the vehicle at issue. Any attack on this testimony (such as Appellant’s assertions that the short time frame the officer had to view the driver and the allegedly poor lighting in the area made the officer’s testimony completely incredible) involves the jury’s belief of Patrolman Garber’s testimony and the weight the jury should give the testimony. Hence, the credibility of the officer’s identification is reserved for a manifest weight challenge.

{¶14} *Nicholson* is factually distinguishable from the instant matter. In *Nicholson*, the appellant, who is referred to as “Onaje,” was convicted of multiple counts of failure to comply. One conviction was upheld on appeal because one of the officers testified that he was “absolutely certain that Onaje was the person he had seen getting into the silver Volvo.” *Id.* at ¶ 168. However, regarding a second failure to comply conviction, the officer testified that he “was not sure” if the suspect was Onaje. Further, “no one else identified the male seen as Onaje.” *Id.* at ¶ 171. As no witness clearly identified the appellant as the perpetrator, the evidence offered was not sufficient to support conviction on the second charge. Assuming the officer’s testimony was credible, it fell short of a positive identification.

{¶15} Here, Patrolman Garber testified that he was able to view the driver of the vehicle at issue in the lighted parking lot area and “he was certain the driver was Appellant.” *State v. McGrew*, 2025-Ohio-333, ¶ 3 (7th Dist.). Patrolman Garber explained

that he was familiar with Appellant, thus was able to recognize him. Hence, Patrolman Garber's testimony was sufficient, if believed by the jury, to convict. In addition, Patrolman Garber ran the license plates through dispatch and learned that the vehicle was registered to Appellant's mother, further linking him to the vehicle. The record shows the evidence was not against the manifest weight. It is readily apparent, here, the jury believed Patrolman Garber. Consequently, the instant matter is entirely factually distinguishable from *Nicholson* (where no witness clearly connected the appellant to the charged crime) and no conflict exists. Appellant's motion to certify a conflict is denied.

#### Conclusion

{¶16} In his reconsideration request, Appellant argues that the state failed to provide requisite notice of its intent to use prior bad acts evidence. This issue was fully addressed in our original Opinion in this matter and it is clear he merely disagrees with the logic employed by this Court. As to the alternative motion to certify a conflict, the case on which Appellant relies is factually distinguishable from the instant matter, and does not contain a conflict of law. Appellant's application for reconsideration and motion to certify a conflict are denied.

**JUDGE CHERYL L. WAITE**

**JUDGE CAROL ANN ROBB**

**JUDGE MARK A. HANNI**



**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**