

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
TIMOTHY L. SNYDER	:	Case No. 10CA0010
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case Nos. 06CR494, 06CR553, and
07CR363

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: July 16, 2010

APPEARANCES:

For Plaintiff-Appellee

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4th Floor
Newark, OH 43055

For Defendant-Appellant

TIMOTHY L. SNYDER, #569-272
Marion Correctional Institution
P.O. Box 57
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Farmer, P.J.

{¶1} Appellant, Timothy Snyder, was indicted on numerous counts of theft in three different cases, Case Nos. 06CR494, 06CR553, and 07CR363. A jury trial on the three cases was held on January 29, 2008. The jury found appellant guilty as charged, and the trial court sentenced appellant to an aggregate term of twelve years in prison.

{¶2} Appellant filed a direct appeal and this court affirmed his convictions and sentences. *State v. Snyder*, Licking App. No. 2008-CA-25, 2008-Ohio-6709.

{¶3} Thereafter, appellant filed a motion to reopen his appeal pursuant to App.R. 26(B), claiming ineffective assistance of appellate counsel. This court denied the motion. *State v. Snyder*, Licking App. No. 2008-CA-25, 2009-Ohio-2473.

{¶4} Appellant also filed several motions for postconviction relief, his latest on April 14, 2009. By entry filed May 11, 2009, the trial court denied the motion. Appellant appealed and this court affirmed the decision. *State v. Snyder*, Licking App. No. 09-CA-79, 2010-Ohio-1643.

{¶5} On November 30, 2009, appellant filed a motion for leave to file a delayed motion for new trial. By entry filed December 31, 2009, the trial court denied the motion.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL BASED ON THE STATE'S INCORRECT STANDARD FOR NEWLY DISCOVERED EVIDENCE."

II

{¶8} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL BASED UPON THE STATE'S THEORY OF RES JUDICATA. THUS MISINTERPRETING CRIM.R.33."

III

{¶9} "THE TRIAL ABUSED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL, WHICH WAS BASED UPON THE ERROR OF THE TRIAL COURT IN ENTERING A JUDGMENT OF CONVICTION OF THEFT OF AN ELDERLY PERSON IN COUNT ONE OF 06-CR-494, WHERE THE STATE FAILED TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED IN THE INDICTMENT BEYOND A REASONABLE DOUBT."

IV

{¶10} "THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL, WHICH WAS BASED UPON THE ERROR OF THE TRIAL COURT IN ENTERING A JUDGMENT OF CONVICTION OF THEFT OF AN ELDERLY PERSON IN COUNT TWO OF 06-CR-494, WHERE THE STATE FAILED TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED IN THE INDICTMENT BEYOND A REASONABLE DOUBT."

V

{¶11} "THE TRIAL COURT ABUSED ITS DISCRETION IN NOT GRANTING THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON INTENTIONAL PROSECUTORIAL MISCONDUCT WHEN THE STATE MISLED THE JURY BY STATING CLAIMS WHICH COULD NOT BE SUPPORTED BY THE EVIDENCE IN RECORD."

VI

{¶12} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON INTENTIONAL PROSECUTORIAL MISCONDUCT BY KNOWINGLY USING THE FALSE AND PERJURED (SIC) TESTIMONY OF JEFF STAHL."

VII

{¶13} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON THE STATE PROVIDING INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION IN COUNT ONE OF 06-CR-494."

VIII

{¶14} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON THE STATE PROVIDING INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION IN COUNT TWO OF 06-CR-494."

IX

{¶15} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON NEWLY DISCOVERED EVIDENCE."

X

{¶16} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON THE FACT THAT HE WAS PREJUDICED BY THE VARIANCE BETWEEN THE ALLEGATIONS AND THE PROOF THEREOF (SIC). (COUNT ONE 06-CR-494)."

XI

{¶17} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON THE FACT THAT HE WAS PREJUDICED BY THE VARIANCE BETWEEN THE (SIC) AND THE PROOF. (COUNT TWO 06-CR—494)."

XII

{¶18} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT THE APPELLANT LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL WHICH WAS BASED UPON THE REJECTION OF KEY EVIDENCE THAT PREVENTED THE APPELLANT FROM HAVING A FAIR TRIAL. CRIM. R 33 E.3."

XIII

{¶19} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH WAS BASED UPON THE FACT THAT HE WAS PREJUDICED DUE TO A MISDIRECTION OF THE JURY. CRIM. R. (E)(4)."

XIV

{¶20} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH SHOWED FROM THE RECORD HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL OF FAILING TO MIVE (SIC) FOR A CRIM.R.29 ACQUITTAL."

XV

{¶21} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION FOR LEAVE WHICH SHOWED FROM THE RECORD THAT HE WAS DENIED EFFECTIVE ASSISTANCE WHEN TRIAL COUNSEL STATED HE WAS GUILTY TO THE JURY. CRIM. R. 33(E)."

{¶22} Appellant assigns fifteen errors for our review. Essentially, appellant claims the trial court erred in denying his motion for leave to file a delayed motion for new trial. The first two assignments of error and Assignment of Error IX specifically address the entry appealed from in the notice of appeal, the December 31, 2009 entry denying his motion for leave to file a delayed motion for new trial. The remaining assignments discuss errors which occurred in the original trial and the sufficiency of the evidence. These arguments are all proper issues for a direct appeal or postconviction relief which were had by appellant and denied as cited supra.

{¶23} In his direct appeal, appellant challenged his convictions as being against the manifest weight of the evidence. In this appeal, Assignments of Error III, IV, VII, VIII, X, XI, XII, and XIII are on the weight and sufficiency of the evidence. Because these issues were brought up on direct appeal, they are not subject matter for a delayed motion for new trial.

{¶24} Assignments of Error V, VI, XIV, and XV were specifically addressed in the denial of the motion to reopen his appeal. The issues therein are not proper subject matter for a delayed motion for new trial and are governed by the doctrine of res judicata. Res judicata is defined as "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, syllabus.

{¶25} Assignments of Error III, IV, V, VI, VII, VIII, X, XI, XII, XIII, XIV, and XV are denied.

I, II, IX

{¶26} Appellant claims the trial court erred in denying his motion for leave to file a delayed motion for new trial. We disagree.

{¶27} Crim.R. 33 governs new trial. Subsection (B) states the following:

{¶28} "Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

{¶29} "Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear

by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period."

{¶30} In denying the motion for leave, the trial court found the request was untimely:

{¶31} "Crim.R 33(B) provides that Motion for a New Trial shall be filed within fourteen (14) days after a verdict is rendered unless it is established by clear and convincing evidence that the defendant was unavoidably prevented from filing said motion. It further provides that a Motion for a New Trial on account of newly discovered evidence shall be filed within 120 days after the day upon which the verdict was rendered. There is nothing presented in the defendant's motion or in the related allegations that constitutes newly discovered evidence or precluded the defendant from filing this motion in a timely manner. In short, any of the allegations currently being raised could have been addressed at the trial court level up and through his underlying conviction on January 31, 2008, or in his direct appeal of that conviction which concluded on December 18, 2008.

{¶32} As such, it is clear the defendant is well outside of the time frames established by Crim.R 33(B). Accordingly, the defendant's underlying Motion for Leave to File Delayed Motion for a New Trial is hereby denied." Entry filed December 31, 2009.

{¶33} In his motion for leave filed November 30, 2009, appellant claimed "[n]ewly [d]iscovered [e]vidence which could not have been produced at trial is now

available." In his memorandum of law attached to the motion, appellant stated the "new evidence" was relative to a handwriting expert:

{¶34} "Furthermore, a handwriting expert has confirmed that these are in fact Jeff Stahl's signatures. With regards to the two receipts that the expert determined to be inconclusive, Jeff Stahl himself stated that he signed those two receipts.***The state was aware of this false testimony and failed to correct it, thus prejudicing the defendant and preventing him from having a fair trial."

{¶35} In his "True Affidavit of Verity," appellant claimed "I have newly discovered evidence that proves that Jeff Stahl signed his signature to all of the receipts totaling \$25,843, 93, see (A)(6)."

{¶36} In the report of Easton-Wehr Handwriting Consultants, it states:

{¶37} "Please understand that in my stating that I feel the rest of the questioned document determinations would stand up in court, there is never a guarantee of which way a case will go (whether or not you will win) when presented in a courtroom. But again, I feel the determinations on your other questioned documents would stand up in court, or I would not have passed on a finding to you that I feel Jeff Stahl did pen them."

{¶38} It is clear from the motion itself that this is not newly discovered evidence, but new evidence not brought up at trial. The issue of a signature on a receipt was before the trial court in the trial. Mr. Stahl's credibility was also before the trial court in the trial. Handwriting analysis was available prior to trial. This issue was ripe for consideration well within the time limits of fourteen to one hundred twenty days.

{¶39} Upon review, we concur with the trial court that the "new evidence" was not newly discovered evidence. Such impeachment to known exhibits was available to appellant during the trial and within the limits of Crim.R. 33.

{¶40} Assignments of Error I, II, and IX are denied.

{¶41} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Delaney, J. concur.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Patricia A. Delaney

JUDGES

SGF/sg 628

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TIMOTHY L. SNYDER	:	
	:	
Defendant-Appellant	:	CASE NO. 10CA0010

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer_____

s/ John W. Wise_____

s/ Patricia A. Delaney_____

JUDGES