

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-13-1170

Appellee

Trial Court No. CR0200502482

v.

Juan Rivera

DECISION AND JUDGMENT

Appellant

Decided: February 28, 2014

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Juan Rivera, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Juan Rivera, appeals from the July 15, 2013 judgment of the Lucas County Court of Common Pleas. Appellant was convicted in 2005 after the court accepted his *Alford* plea to two counts of rape and two counts of gross sexual imposition.

{¶ 2} Following his conviction and sentence, appellant has filed four postconviction relief petitions and five motions related to both his conviction and his sentence. This court has reviewed his sentence on several occasions through direct appeal and delayed appeal. While we reversed appellant's sentence on direct appeal and remanded the case for resentencing, we affirmed his conviction. *State v. Rivera*, 6th Dist. Lucas No. L-05-1356, 2006-Ohio-3185 and *State v. Rivera*, 6th Dist. Lucas No. L-12-1040, 2013-Ohio-1591. Appellant has been resentenced several times to correct errors relating to the imposition of consecutive sentences and postrelease control.

{¶ 3} Most recently, on June 13, 2013, appellant filed a motion to have returned to him personal property seized by law enforcement on July 8, 2005. The trial court denied the motion on July 15, 2013. Appellant appeals from this decision asserting a single assignment of error:

Trial Court erred in not returning personal property.

{¶ 4} At the time of his arrest, the police seized appellant's "digital video camera, VHS video tapes, camcorder VHS C tapes, DV tapes, micro cassette tape, video adapter, box from Polaroid film, Panasonic Palmcorder, Polaroid camera, rolls of 35 mm film, and a package of color photo prints." Appellant asserts that this evidence consists solely of family memorabilia and is not contraband. Therefore, appellant argues he is entitled to return of his property pursuant to R.C. 2981.11(C).

{¶ 5} Crim.R. 26 provides generally that:

Physical property, other than contraband, as defined by statute, under the control of a prosecuting attorney for use as evidence in a hearing or trial should be returned to the owner at the earliest possible time. To facilitate the early return of such property, where appropriate, and by court order, photographs, as defined in Evid. R. 1001(2), may be taken of the property and introduced as evidence in the hearing or trial. The admission of such photographs is subject to the relevancy requirements of Evid. R. 401, Evid. R. 402, Evid. R. 403, the authentication requirements of Evid. R. 901, and the best evidence requirements of Evid. R. 1002.

R.C. 2981.11(A)(1) more specifically provides that:

(A)(1) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency shall be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and shall be disposed of pursuant to sections 2981.12 and 2981.13 of the Revised Code.

{¶ 6} The trial court, in the exercise of its discretion, may permit the state to retain control over seized property if it is being held as part of a criminal investigation or for possible use as evidence in a future action. *State v. Bates*, 6th Dist. Williams No.

WM-11-007, 2012-Ohio-1397, ¶ 15-16, and *Hicks v. Barberton Police*, 9th Dist. Summit No. 23976, 2008-Ohio-2958, ¶ 5.

{¶ 7} The state argues that the seized materials were not used as evidence in appellant's trial because he entered an *Alford* plea. But, the materials might be needed as evidence in a future retrial of this case. The state asserts that the tapes, photos, and film are evidence that appellant was performing sex acts upon his girlfriend's minor children.

{¶ 8} The trial court found that because appellant continues to challenge the validity of his convictions, there is a possibility that the seized property might need to be used as evidence in a future retrial.

{¶ 9} We find that the trial court did not abuse its discretion when it ruled in favor of the state. Because appellant entered an *Alford* plea and the evidence held by the state was not entered into the record and appellant has repeatedly challenged his conviction and sentence, there remains a possibility the evidence would be needed if the case was ever reversed and remanded for retrial. Therefore, we find appellant's sole assignment of error not well-taken.

{¶ 10} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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