

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JESSE M. STINSON

Defendant-Appellant

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Appellate Case No. 28148

Trial Court Case No. 2013-CR-237

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 23rd day of August, 2019.

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MATHIAS H. HECK, JR., by HEATHER N. JANS, Atty. Reg. No. 0084470, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 West Third Street, 5th Floor, Dayton, Ohio 45422

Attorney for Plaintiff-Appellee

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Defendant-Appellant, Pro Se

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HALL, J.

{¶ 1} Jesse M. Stinson appeals pro se from the trial court's decision, order, and entry overruling separate new-trial motions he filed on February 27, 2018 and March 9, 2018.¹

{¶ 2} Stinson advances four assignments of error. First, he contends the trial court erroneously applied the doctrine of res judicata to his March 9, 2018 new-trial motion. Second, he claims the trial court applied an incorrect legal standard to that motion. Third, he asserts that the trial court erred in finding the evidence supporting his March 9, 2018 motion to be irrelevant. Fourth, he argues that the trial court adopted an "incorrect standard of review" when applying res judicata to his February 27, 2018 motion.

{¶ 3} The record reflects that Stinson was convicted of murder and other serious charges following a 2014 jury trial. He received an aggregate sentence of 32 years to life in prison. This court affirmed on direct appeal, overruling assignments of error addressing the weight and sufficiency of the evidence, an earlier new-trial motion, and merger of allied offenses. See *State v. Stinson*, 2d Dist. Montgomery No. 26449, 2015-Ohio-4405.

{¶ 4} In May 2015, Stinson filed a statutory petition for post-conviction relief. The following month, he amended the petition. Among other things, he argued, without a supporting affidavit, that a person named Reginald Langford had identified James Demmons as the owner of a handgun used in the murder. Stinson also argued that the

¹ Following briefing in this appeal, Stinson filed two motions on July 17, 2019. The first is a motion to supplement his reply brief on the grounds that a portion of his original reply brief inadvertently was omitted. The second is a motion to exceed the page limit for a reply brief on the grounds that including the omitted material would exceed the page limit. Accompanying the two motions is a file-stamped copy of Stinson's proposed supplemental reply brief. Upon review, we sustain Stinson's motion to supplement his reply brief and his motion to exceed the page limit. Stinson's file-stamped supplemental reply brief is accepted, and has been considered in this opinion, as filed.

prosecutor had engaged in misconduct during a pretrial interview by leading Demmons while obtaining a statement from him. The trial court denied the petition in November 2017. Stinson did not appeal.

{¶ 5} Thereafter, on February 27, 2018, Stinson moved for a new trial based on newly discovered evidence, namely an affidavit from Reginald Langford. In the affidavit, Langford averred that the prosecutor had interviewed him prior to Stinson's trial. According to Langford, he denied knowing anything about the crimes in Stinson's case. In response, the prosecutor allegedly told him what to say on the witness stand and threatened him with additional prison time if he did not cooperate and do what the prosecutor told him. Although Langford ultimately did not testify at Stinson's trial, Stinson argued that the affidavit bolstered and corroborated a similar, prior allegation involving another witness, Stinson's cousin Gerry Stinson, who did testify at trial.

{¶ 6} Less than two weeks later, Stinson filed a second new-trial motion. In that March 9, 2018 filing, which also was predicated on newly discovered evidence, he submitted another affidavit from Langford. This time Langford averred that a private investigator had shown him a picture of "the gun." Langford stated that he did not tell the investigator who owned the gun. According to Langford, he later told Stinson's trial counsel that "the gun was brought to the house by Jimmy." Langford added that "Jimmy" "said whoever wanted to use it could, it was the house gun until he left." The reference to "Jimmy" appears to have been a reference to James Demmons, who had testified as a witness at Stinson's trial. In his new-trial motion, Stinson relied on Langford's affidavit to argue that Demmons owned the gun that was used in the murder.

{¶ 7} The trial court overruled both new-trial motions in a September 21, 2018

decision, order, and entry. It held that proof of ownership of the gun was irrelevant because ownership was not an element of any of charges against Stinson. With regard to the use of Langford's affidavit to challenge Gerry Stinson's trial testimony, the trial court held that res judicata applied "since Defendant could have raised this claim in a direct appeal of his conviction[.]" Finally, the trial court determined that "there was overwhelming evidence at trial, in addition to the evidence contained in Gerry Stinson's testimony, of Defendant's guilt," and "that Defendant has not brought forth any newly discovered evidence to support the need for a new trial."²

{¶ 8} In his first assignment of error, Stinson argues that the trial court's denial of his May 2015 statutory petition for post-conviction relief should not have been given res judicata effect with regard to his March 9, 2018 new-trial motion. First, he contends Langford's affidavit about gun ownership did not exist when the trial court ruled on the 2015 petition. Second, he claims the trial court's ruling on the petition was "void" because the trial court violated Ohio Sup.R. 40(A) by taking too long to reach a decision. Third, he contends that, upon a showing of "good cause," this court's decision in *State v. Call*, 2d Dist. Montgomery No. 15280, 1996 WL 27830 (Jan. 24, 1996), authorizes second or successive post-conviction relief petitions involving the same issue and the same facts.

{¶ 9} Upon review, we find Stinson's first assignment of error to be without merit. Although we are unconvinced by any of his arguments, we need not dwell on them. His first assignment of error necessarily fails for other reasons. As a preliminary matter, the

² On appeal, the State suggests that Stinson's new-trial motions were subject to being overruled on the additional grounds that they were untimely and that he did not request and obtain leave to file them. We need not resolve these issues, which the trial court did not address, because we conclude that the trial court properly overruled the motions for other reasons.

trial court does not appear to have given its denial of his 2015 statutory petition for post-conviction relief res judicata effect. Rather, the trial court explicitly applied res judicata based on a finding that Stinson could have raised his claims in the direct appeal of his conviction. More importantly, and regardless of the applicability of res judicata, the only issue raised in the March 9, 2018 new-trial motion was ownership of the murder weapon. As set forth above, Stinson produced an affidavit from Reginald Langford, who suggested that James Demmons owned the firearm. The trial court correctly observed, however, that ownership of the firearm was irrelevant to Stinson's convictions. At trial, the State presented eyewitness testimony that Stinson shot and killed Tryee North in North's home during a dispute over a drug deal. *Stinson* at ¶ 12. Although the State presented evidence establishing Stinson's possession and use of the firearm, Stinson suggests that the State did not prove ownership and, based on Langford's affidavit, that he did not own the weapon. In denying Stinson's new-trial motion, the trial court correctly recognized, however, that none of his convictions required proof of ownership of the handgun. That being so, we fail to see how ownership of the weapon was relevant to any material issue. Even if ownership of the gun did have marginal relevance to some issue in the case, a new trial is not warranted based on newly discovered evidence unless, among other things, the new evidence " 'discloses a strong probability that it will change the result if a new trial is granted[.]' " *State v. Gillispie*, 2012-Ohio-2942, 985 N.E.2d 145, ¶ 43 (2d Dist.), quoting *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947), at syllabus. Here we are firmly convinced that the result of Stinson's trial would have been the same if the jury had heard evidence from Langford claiming that Demmons brought the gun to the house and designated it as the house gun. Accordingly, the first assignment of error is overruled.

{¶ 10} In his second assignment of error, Stinson claims the trial court applied an incorrect legal standard to find that ownership of the gun was irrelevant. Specifically, he reasons that the trial court erroneously “reduced a Motion for New Trial based on the presentation of New Evidence down to a Motion arguing if the State met the elements of a crime the Appellant was convicted of.” (Appellant’s brief at 14.) In his third assignment of error, Stinson challenges the merits of the trial court’s determination that Langford’s affidavit regarding ownership of the gun was irrelevant.

{¶ 11} Although the arguments advanced under Stinson’s second and third assignments of error are unclear, we harbor no doubt that the trial court correctly found ownership of the murder weapon irrelevant to any material issue and correctly found Langford’s affidavit about gun ownership insufficient to warrant a new trial. Once again, the State was not required to prove who owned the weapon used to kill North. We see no strong probability, or any likelihood at all, that the result of Stinson’s trial would have been different if the jury had been made aware of Langford’s suggestion that Demmons owned the weapon. The second and third assignments of error are overruled.

{¶ 12} In his fourth assignment of error, Stinson contends the trial court adopted an “incorrect standard of review” when applying res judicata to his February 27, 2018 motion. He asserts that the trial court misapplied res judicata and that the doctrine did not preclude the claim in Langford’s affidavit about the prosecutor telling Langford how to testify and threatening him with additional prison time if he did not cooperate.

{¶ 13} As we noted above, Langford in fact did not testify at Stinson’s trial. Therefore, Stinson’s argument cannot be that the prosecutor elicited false testimony through Langford. Instead, Stinson appears to suggest that Langford’s affidavit lends

credence to a prior claim that a detective similarly had told another witness, Stinson's cousin Gerry Stinson, how to testify. The most significant part of Gerry Stinson trial testimony was that, following the shooting, he overheard Demmons ask defendant Stinson why he had shot North. (Trial Tr. at 691.)

{¶ 14} On cross-examination, defense counsel elicited from Gerry Stinson that he felt pressured by a detective to divulge information about the crime. Gerry Stinson testified that the detective talked about charging him in connection with the incident. (*Id.* at 709.) Gerry Stinson professed not to remember whether the detective had said he would be in a lot of trouble if he did not give the police "something." (*Id.* at 713.) Gerry Stinson then claimed he didn't know whether he had heard Demmons ask defendant Stinson about shooting North. (*Id.* at 714.) Gerry Stinson also denied that the detective told him that he could get three years in prison if he changed his story. (*Id.*) Defense counsel then asked Gerry Stinson about an interview with Clarence Sampson, a private investigator working for the defense. Gerry Stinson denied telling Sampson that he merely had repeated what the detective wanted to hear to avoid getting into trouble. (*Id.* at 718.) Gerry Stinson then testified, however, that he did not remember whether he told Sampson that he had lied to the detective about hearing Demmons ask defendant Stinson about the shooting. (*Id.*) Gerry Stinson also did not remember telling Sampson that if he told the truth at trial he could get three years in prison. (*Id.* at 717.)

{¶ 15} Defense counsel subsequently called Sampson as a witness at trial. Sampson testified that he had interviewed Gerry Stinson two weeks before trial. According to Sampson, Gerry Stinson claimed he had lied to investigators and had told them what they wanted to hear. (*Id.* at 1076.) Sampson testified that Gerry Stinson denied

ever overhearing Demmons ask defendant Stinson about shooting the victim. (*Id.* at 1077.) Sampson further testified that Gerry Stinson expressed fear about receiving additional prison time if he failed to stick to what investigators wanted him to say. (*Id.*)

{¶ 16} Defendant Stinson now seeks to use Langford's new-trial affidavit about the prosecutor allegedly pressuring him to testify a certain way to support defense counsel's argument that a detective similarly had pressured Gerry Stinson to say what the detective wanted to hear. Even if we accept, *arguendo*, that *res judicata* does not bar defendant Stinson from raising this argument because he could not have raised it on direct appeal, the trial court still correctly overruled his February 27, 2018 new-trial motion.

{¶ 17} In addition to relying on *res judicata*, the trial court also denied a new trial on the basis that "there was overwhelming evidence at trial, in addition to the evidence contained in Gerry Stinson's testimony, of Defendant's guilt." This is another way of saying that Langford's affidavit failed to disclose a strong probability that it would change the result if a new trial were granted. We agree with this determination. In addition to other evidence, James Demmons testified at trial that he had watched defendant Stinson shoot Tyree North in the head. Demmons also testified that he personally asked defendant Stinson why he had shot North. Gerry Stinson's testimony about overhearing Demmons ask this question was merely cumulative and was not crucial to defendant Stinson's conviction. Based on our review of the record, we are convinced that Langford's own allegations about being pressured by the prosecutor to testify would not change the result if a new trial were granted. That being so, the trial court properly denied the motion. The fourth assignment of error is overruled.

{¶ 18} The judgment of the Montgomery County Common Pleas Court is affirmed.

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FROELICH, J. and TUCKER, J., concur.

Copies sent to:

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Jesse M. Stinson
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