

[Cite as *State v. Jamison*, 2010-Ohio-2391.]

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

STATE OF OHIO	:	
Plaintiff-Appellee	:	Appellate Case No. 23356
	:	Trial Court Case No. 06-CR-1378
v.	:	
	:	
BRIAN ANTHONY JAMISON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	
	:	
	:	

OPINION

Rendered on the 28th day of May, 2010.

MATHIAS H. HECK, JR., by JOHNNA M. SHIA, Atty. Reg. #0067685, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

BRIAN ANTHONY JAMISON, #549-327, Chillicothe Correctional Institution, Post Office Box 5500, Chillicothe, Ohio 45601
Attorney for Defendant-Appellant

FAIN, J.

{¶ 1} Defendant-appellant Brian Jamison appeals from an order of the trial court denying his motion for leave to file an untimely motion for a new trial, under Crim. R. 33, without a hearing. From our review of the record, we conclude that the trial court correctly found that the “newly discovered” evidence upon which Jamison relies

could, with reasonable diligence, have been discovered by him before trial. Accordingly, the order from which this appeal is taken is Affirmed.

I

{¶ 2} The facts giving rise to Jamison's trial and conviction upon multiple counts of Possession of Drugs, one count of Possession of Criminal Tools, and one count of Having a Weapon While Under a Disability, are set forth in *State v. Jamison*, Montgomery App. No. 22177, 2008-Ohio-2065, wherein we affirmed his conviction and sentence. Essentially, Jamison was observed committing the traffic offenses of speeding and changing lanes without signaling. He was stopped, and at some point it was determined that his driver's license was suspended. Jamison was arrested for Driving Under a Suspension. Because he was alone in the car, which he had borrowed from his girlfriend, an inventory search was conducted prior to towing the vehicle. That search uncovered contraband giving rise to the charges for which he was tried and convicted.

{¶ 3} Jamison appealed from his conviction and sentence. We affirmed. *Id.*

{¶ 4} Jamison petitioned for post-conviction relief. His petition was denied. He appealed. We affirmed. *State v. Jamison*, Montgomery App. No. 22806, 2009-Ohio-3515.

{¶ 5} In early 2009, Jamison filed the motion for new trial with which the appeal presently before us is concerned. Because his motion was filed more than 120 days after his judgment of conviction, Jamison sought leave of court, contending that his motion was based upon newly discovered evidence that could not, with reasonable

diligence, have been found before trial. The trial court overruled his motion for a new trial, without a hearing, concluding that Jamison had failed to demonstrate that the “newly discovered” evidence upon which he relies could not have been discovered by him before trial with reasonable diligence.

{¶ 6} From the overruling of his motion for a new trial, Jamison appeals.

II

{¶ 7} Jamison’s assignments of error are as follows:

{¶ 8} “THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING DEFENDANT’S MOTION FOR A NEW TRIAL PURSUANT TO CRIM. R. 33.

{¶ 9} “THE TRIAL COURT ERRED IN DENYING DEFENDANT’S CRIM. R. 33 MOTION FOR A NEW TRIAL BASED ON KNEWLY [sic] DISCOVERED EVIDENCE WERE [sic] STATE’S PROSECUTOR AND ARRESTING OFFICER VIOLATED DEFENDANT’S DUE PROCESS RIGHT BY KNOWINGLY USING PERJURED TESTIMONY TO ESTABLISH PROBABLE CAUSE FOR AN ILLEGAL TOW, SEARCH, AND ARREST, IN ORDER TO GAIN A CONVICTION.”

{¶ 10} In support of both assignments of error, Jamison argues that he presented newly discovered evidence, in the form of traffic tickets for driving under a suspension, speeding, failing to stop before crossing a sidewalk while exiting from a parking lot, failing to signal, and reckless operation, filed on April 3, 2006 (a Monday), which would tend to show that Jamison was not actually stopped and arrested at 10:20 p.m. on March 31, 2006 (the preceding Friday), for the traffic offenses, as claimed by the officer, and there was therefore no proper basis for the inventory search leading to

the discovery of the contraband. Jamison contends that the fact that the traffic citations were not filed in the Dayton Municipal Court until three days after he was stopped, and that, as he alleges, he was never served with the traffic citations, demonstrates that the police officer who stopped and arrested him was lying when he testified that he stopped and arrested Jamison for the traffic violations, including driving while under a suspension.

{¶ 11} Besides the obvious fact that the traffic tickets were filed in the clerk's office the first weekday following Jamison's night-time arrest, we suspect that it is common, when a police officer stops a motorist for traffic violations, even when they include driving under a suspension, and, as a result of the stop, uncovers evidence of more serious criminal activity, for the police officer to give greater focus to the more serious crimes. Nevertheless, these facts could have been brought out at the suppression hearing, during the cross-examination of the police officer who stopped Jamison, in an attempt to undermine the officer's credibility.

{¶ 12} But the traffic tickets can hardly be deemed to be newly discovered evidence that Jamison could not, with reasonable diligence, have discovered before his trial. He contends that he was not served with the traffic citations. At the suppression hearing, at the latest, when it was evident that the State was relying upon the traffic stop and arrest for driving under a suspension as a basis for the tow and inventory search, Jamison had to have known that, as he claims, he had not been served with the traffic citations. This was before the trial, and Jamison could have sought out the tickets at the Dayton Municipal Court Clerk's office. Even without the tickets, Jamison presumably knew, and could have testified, that he had not been

served with them.

{¶ 13} We agree with the trial court that the traffic citations, and Jamison's knowledge that he had never been served with them, did not constitute newly discovered evidence that could not, with reasonable diligence, have been discovered by him before trial. Therefore, the trial court properly overruled Jamison's motion for a new trial. *State v. Wilson*, Montgomery App. No. 23247, 2009-Ohio-7035.

{¶ 14} Jamison's assignments of error are overruled.

III

{¶ 15} Jamison's assignments of error having been overruled, the order overruling his motion for a new trial is Affirmed.

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FROELICH and WILLAMOWSKI, JJ, concur.

(Hon. John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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