

[Cite as *State v. Jackson*, 2017-Ohio-2659.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104782

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DELANO JACKSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-98-361808-ZA

BEFORE: Kilbane, P.J., Blackmon, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 4, 2017

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Delano Jackson (“Jackson”), appeals from the trial court’s denial of his motion for a new trial. For the reasons set forth below, we affirm.

{¶2} In December 1994, Jackson was indicted with the aggravated murder of Christopher Campbell (“Campbell”) and the attempted murder of Alonzia Murphy (“Murphy”). One of the eyewitnesses to the murder was Channille Grice (“Grice”), who was Jackson’s girlfriend at the time. Prior to trial on these charges, Jackson persuaded Grice to not cooperate with the state, even after being placed in jail for three days as a material witness. As a result, the state dismissed the charges against Jackson.

{¶3} Then sometime during December 1995 – January 1996, Grice met with the police and told them that Jackson was the shooter. She took the police to the location where Jackson had disposed of the murder weapon. Jackson broke the murder weapon into pieces and threw it into Lake Erie. Thereafter, in April 1998, the state refiled charges against Jackson concerning Campbell’s murder. Jackson was also charged with the attempted murder of Murphy.

{¶4} In October 1998, the matter proceeded to a jury trial, which ended in a hung jury. A second jury trial commenced in February 1999. At the conclusion of this trial, the jury returned with a verdict, finding Jackson guilty of both aggravated murder and attempted murder. The trial court sentenced Jackson to 25 years to life in prison. Jackson appealed his convictions to this court in *State v. Jackson*, 8th Dist. Cuyahoga No.

76141, 2000 Ohio App. LEXIS 1741 (Apr. 20, 2000), *discretionary appeal not allowed*, 90 Ohio St.3d 1413, 735 N.E.2d 454, 2000 Ohio LEXIS 2360 (Sept. 20, 2000).

{¶5} The relevant facts of this case were previously set forth by this court in

Jackson as follows:

On the evening of October 5, 1994, [Campbell] was the passenger in a car driven by [Murphy]. They were on their way to visit Murphy's cousin, [Grice], at 11604 Durant Avenue in Cleveland. Upon arrival, they drove by the house once before pulling into the driveway because [Murphy] was unsure of her address. As they pulled into the driveway next to the house, [Campbell] was shot six times as he sat in the passenger side of the vehicle.

[Murphy] was also shot once in the abdomen. [Murphy] immediately backed out of the driveway and drove toward Mt. Sinai Hospital as [Campbell] bled in the front seat of the car. [Campbell] died on the way to Mt. Sinai as the result of the six gun shot wounds.

[Murphy's] gunshot wound caused injuries to his intestines and leg and the bullet remains in his left leg. Because of the darkness and excitement of the moment, [Murphy] was unable to identify the shooter.

At the time of the murder, [Jackson's] girlfriend was Channille Grice [(“Grice”)], age 17. She testified that [Jackson] (a.k.a. “Rick” or “Slick Rick”) was abusive toward her and on occasion would blacken her eyes and bust her lip. [Jackson] was jealous of her and threatened to kill her if she ever left him. He also told her that if he ever caught her romantically involved with someone else he would kill her and that man as well.

On the afternoon of the killing, [Grice] testified that she left high school and met [Jackson] at the house of his best friend, Jameal Allen. [Jackson] asked her who had given her a ride to Jameal's house. [Grice] said she had ridden the bus. However, [Jackson] did not believe her, told her she was lying and slapped her. [Jackson] then took [Grice] home to 11604 Durant in a grey Monte Carlo.

When defendant and [Grice] arrived at her house, it was getting dark. They remained in the car arguing about his jealousy during which [Jackson] again told her that he would kill her if she ever left him and would kill any man she would see. Before they got out of the car, [Jackson] showed [Grice] a firearm he stored in the back seat. She had seen [Jackson] fire

the same firearm out of the window of his car on a prior occasion. She had also seen the same gun under [Jackson's] mattress at his house. [Grice] identified State's Exhibit 49 as the same kind of weapon [Jackson] had shown her on October 5, 1994.

[Grice] testified that once they arrived at her home, defendant and [Grice] went inside and had sexual relations. Afterward, [Grice] escorted [Jackson] to his car and was standing near his car when the victims first drove by. She testified that defendant then reached into his car and armed himself with the gun. When the victims drove into the neighboring driveway, someone in the car yelled: "Hey girl, hey Channille." However, she could not see who was calling her from inside the car. [Jackson] then walked toward the victims' car and started shooting at them until the gun was empty. [Grice] testified that after he finished shooting, [Jackson] jumped into the grey Monte Carlo car and drove away alone.

* * *

According to [Grice], shortly after [Jackson] fled the scene, he called to ask her if she told the police that he was the shooter. She said that she did not tell the police anything. She did, however, tell [Jackson] that he had killed someone.

[Grice] further testified that when she was initially questioned on the night of the murder, she told the police the killer was a man named Damon Wheat. However, on the witness stand, [Grice] admitted she lied to the police about Wheat because she was scared and cared about [Jackson]. On October 12, 1994, she was confronted with information that she had lied and she finally told the truth to Det. Michael O'Malley of the homicide unit.

A short time later, [Grice] told [Jackson] that she had identified him as the shooter to the police. [Jackson] told her she had to "fix it." Soon thereafter, [Jackson] took [Grice] to Gordon Park where he broke the murder weapon down into pieces and threw them into Lake Erie.

Det. O'Malley testified that he met with [Grice] on October 12, 1994. She told him that [Jackson] was the shooter who killed [Campbell] and that she was also still in love with [Jackson] at that time.

After throwing the weapon in the lake, [Jackson] went to Las Vegas. While there, he telephoned [Grice] and she told him that he had been charged with aggravated murder. [Jackson] later returned to the Cleveland

area and was arrested on December 15, 1994 by the FBI Fugitive Task Force while lying in bed with [Grice].

Id. at *1-6.

{¶6} In his appeal, Jackson argued, inter alia, that improper evidence was admitted at trial, the state improperly used its peremptory challenges, the trial court did not allow him to introduce certain witness testimony, the defense was ambushed by the production of a tape recording not produced in discovery, prosecutorial misconduct, improper amendments to the indictments, and improper jury instructions. We affirmed the trial court's judgment. *Jackson*, 2000 Ohio App. LEXIS 1741 (Apr. 20, 2000).

{¶7} Thereafter, Jackson sought leave and filed a motion for a new trial, which the trial court granted in September 2014. In his motion, Jackson argued that the state did not inform Jackson of the reason that Grice changed her mind and testified against him. He claims "it appears" that the state made a deal with Grice, a key witness, by allowing her to expunge her juvenile record in exchange for her trial testimony. It was not disclosed to defense counsel at Jackson's second trial that Grice's records had been expunged. He further argued the state did not provide Jackson with the exculpatory ballistics report.

{¶8} In May and June 2016, the trial court held hearings on the matter. At the May hearing, the trial court explained its concern with Jackson's argument that Grice's juvenile record was not discoverable during the second trial in 1998 because the state asked her about her criminal history on the record and defense counsel did not question her about it during cross-examination. The state explained that the retrieval of Grice's

juvenile cases has been challenging because of the backup methods used by juvenile court in the early 2000s. The state was able to provide the court with the outline of the charges and disposition of Grice's cases. Grice's cases were disposed of by April 1995.

{¶9} In June 2016, the parties reconvened before the court for a hearing on the ballistics report and the court's review of Grice's juvenile court files and green cards (the documents that would have been used for any plea deals). The state advised the court that up until 2007, it was the policy of the Cuyahoga County Prosecutor's Office to destroy files in juvenile court once the juvenile reached 21 years of age. The state was not able to locate Grice's files or the green cards, if any existed. After a sidebar, the trial court allowed the state to put on the record the three juvenile cases against Grice. The first case was filed in May 1993 and was disposed of in June 1994. The second case was disposed of in April 1995. The third case was filed in November 1994 and was disposed of in April 1995. Jackson stipulated that for purposes of his motion, that all of Grice's juvenile court cases were disposed of by April 1995. Jackson also stipulated at the hearing that there was no error with the ballistics report.

{¶10} Investigator O'Malley (f.k.a. Detective O'Malley) testified at the hearing. He testified that his first interaction with Grice was because of his investigation of Campbell's murder. Initially, Grice did not cooperate with the investigation in 1994. She later cooperated with him in 1996, after she was reported a victim of felonious assault by Jackson. That case was tried before the bench and resulted in a not guilty verdict. After that case, O'Malley testified that Grice informed him that she knew where

Jackson disposed of the murder weapon. In March 1996, Grice showed Investigator O'Malley the location, which was in Lake Erie. Due to the condition of the lake, the weapon was not recovered until August 1996.

{¶11} Investigator O'Malley further testified that he filed charges against Grice in 1994 for the false information she provided to him during the murder investigation. He believed those charges were disposed of by the time she came forward with the new information in 1996. He stated that he was not aware of any pending juvenile cases for Grice at that time. He further stated that he never discussed any type of deal or disposition with Grice.

{¶12} After the conclusion of the hearing, the trial court denied Jackson's motion for a new trial, finding there was "no evidence that the key witness in this case received any benefit for her testimony."

{¶13} Jackson now appeals, raising the following single assignment of error for review.

Assignment of Error

The trial court erred by failing to grant [Jackson] a new trial based upon the failure to disclose impeachment information and the failure to preserve juvenile records.

{¶14} Jackson argues that he should have a new trial because the disposition of Grice's juvenile cases is unknown and the situation is highly suggestive of favorable treatment to Grice in return for her change of story and implicating Jackson with the murder.

{¶15} Crim.R. 33(A) sets forth the grounds on which a trial court may grant a defendant's motion for a new trial in a criminal case. In this case, Jackson alleges that he was entitled to a new trial pursuant to Crim.R. 33(A), which state in pertinent part:

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

* * *

(6) When new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the trial.

{¶16} The standard applied when reviewing a trial court's determination on a motion for a new trial is that of abuse of discretion. *State v. Schiebel*, 55 Ohio St.3d 71, 564 N.E.2d 54 (1990), paragraph one of the syllabus. "The term "abuse of discretion" * * * implies that the court's attitude is unreasonable, arbitrary or unconscionable.'" (Citations omitted.) *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

{¶17} Jackson argues that had defense counsel been aware of the juvenile charges against Grice at the time of the second trial, inquiry into the disposition of those charges, or the fact that charges had been brought against her for noncooperation, could have been brought to the jury's attention for impeachment purposes given that the first trial ended in a hung jury. He further argues the state's failure to provide Grice's juvenile records and the fact that at least part of them were brought against her in relation to her pending testimony violated *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct 1194, 10 L.Ed.2d 215 (1963).

{¶18} In *Brady*, the United States Supreme Court held that a criminal defendant may claim denial of due process where the state fails to disclose the existence of potentially exculpatory evidence. *Id.* at 88. “The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87. The duty to disclose such evidence is applicable even though there has been no request by the accused. *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). The duty encompasses impeachment evidence as well as exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), citing *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). Such evidence is material “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* at 682.

{¶19} We remain mindful that:

It is fundamental to the discovery rule of [Brady], that the materiality of a failure to disclose favorable evidence “must be evaluated in the context of the entire record.” [*Agurs*], 427 U.S. 97, 112, 49 L.Ed.2d 342, 96 S.Ct. 2392 (1976). It is simply not enough to show that the undisclosed evidence would have allowed the defense to weaken, or even to “destroy,” *ante*, at 441, the particular prosecution witnesses or items of prosecution evidence to which the undisclosed evidence relates. It is petitioner’s burden to show that in light of all the evidence, including that untainted by the *Brady* violation, it is reasonably probable that a jury would have entertained a reasonable doubt regarding petitioner’s guilt. *See* [*Bagley*], 473 U.S. 667, 682, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985); *Agurs*, *supra*, at 112-113.

Kyles v. Whitley, 514 U.S. 419, 460-461, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

In order to find reversible error based upon a *Brady* violation, we must find that the violation was material. *State v. Iacona*, 93 Ohio St.3d 83, 92, 2001-Ohio-1292, 752 N.E.2d 937.

{¶20} In the instant case, the trial court found there was “no evidence that the key witness [Grice] in this case received any benefit for her testimony.” We find no abuse of discretion in the court’s decision. The trial court stated on the record that it has an issue with Jackson’s argument that Grice’s juvenile record was not discoverable because the state asked her about it on the record.

{¶21} Grice testified at both the 1998 trial and the 1999 retrial. In the 1998 trial, the state questioned Grice about why she was placed in jail when she was a material witness in the case. Grice responded that she “wasn’t cooperating.” The state further questioned her about her obstruction of justice charge in 1994. Grice replied that she was adjudicated delinquent for obstruction of justice for lying to the police during their investigation. Defense counsel cross-examined Grice on the issue, confirming that she was charged with obstruction of justice. In the 1999 trial, she testified that she was charged with obstruction of justice after Jackson was arrested in 1994. She also testified about being placed in jail when she was a material witness in the case.

{¶22} The victim in Grice’s other juvenile case testified at Jackson’s 1999 trial. She testified on cross-examination that she and Grice had “problems” in 1994, including a situation on a bus (which resulted in charges against Grice in juvenile court). She testified that the two of them got into fist fights in 1994.

{¶23} Based on the above testimony, defense counsel was aware of Grice's cases in the juvenile court and was aware that Grice and the victim had a violent history together. Jackson cannot demonstrate that the state failed to disclose the existence of potentially exculpatory evidence.

{¶24} Moreover, the parties stipulated that Grice's juvenile cases were disposed of in April 1995. Grice did not decide to cooperate with the police until March 1996, which was nearly a year after the disposition of her juvenile cases and after Jackson was found not guilty of assaulting Grice.

{¶25} In light of the foregoing, we cannot say that the trial court abused its discretion in denying Jackson's motion for a new trial. He has not demonstrated that "it is reasonably probable that a jury would have entertained a reasonable doubt regarding [his] guilt." *Bagley*, 473 U.S. 667, 682, 87 L.Ed.2d 481, 105 S.Ct. 3375.

{¶26} The sole assignment of error is overruled.

{¶27} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR