

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	)	Case No. 2019-0549
	)	
Plaintiff-Appellee,	)	On Appeal from the
	)	Lake County Court of Appeals,
v.	)	Eleventh Appellate District
	)	
KEVIN D. KNOEFEL	)	
	)	Court of Appeals Case No. 2017-L-150
Defendant-Appellant.	)	

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**MEMORANDUM IN RESPONSE OF APPELLEE STATE OF OHIO**

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**EXPLANATION OF WHY THIS CASE DOES NOT INVOLVE  
A SUBSTANTIAL CONSTITUTIONAL QUESTION, NOR A  
QUESTION OF PUBLIC OR GREAT GENERAL INTEREST**

On April 19, 2019, Defendant-Appellant Kevin D. Knoefel filed a Notice of Appeal and Memorandum in Support of Jurisdiction with this Court, appealing the decision of the Eleventh District Court of Appeals in *State v. Knoefel*, 11th Dist. Lake No. 2017-L-105, 2019-Ohio-267 (“*Knoefel II*”). The appellate court affirmed the trial court’s denial of Appellant’s post-trial motions.

Appellant raises two propositions of law: one related to the denial of his motion for a new trial and one related to the denial of his petition for postconviction relief. His arguments were both thoroughly reviewed and rejected by the court of appeals. In both propositions of law, Appellant makes much ado about the quantity of “evidence<sup>1</sup>” that he attached to his pleadings. The State’s position regarding Appellant’s propositions is simple: quantity does not equal quality. The standards for granting a hearing for a motion for a new trial or a petition for postconviction relief do not take the quantity of exhibits into consideration; a trial court is required to review each exhibit and determine whether those exhibits, when taken together, meet the applicable standard. In this case, the trial court reviewed each and every exhibit submitted by Appellant and by the State and found that the pleadings did not warrant hearings.

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<sup>1</sup> In its judgment entry denying Appellant’s post-trial pleadings, the trial court stated that Appellant’s “argument confuses impeachment testimony with direct evidence.”

An appeal to this Court is not to be used because an appellant disagrees with the result below; but in this case, Appellant is simply displeased with the outcome of his case and now seeks review by this Court even though the issues presented do not satisfy the applicable standard.

Appellant is raising the very same arguments that he raised below, and those arguments bear little resemblance to his stated propositions of law. The areas of law raised here—motions for new trial and postconviction petitions—are not evolving areas of the law. The law applied by both the trial court and appellate court is well-settled.

Additionally, the issues are fact-specific to this case and do not rise to the level of great general or public interest. Not only are these issues fact-specific, but the facts as recited by Appellant are liberally construed and full of inexactitude. One thing that is accurate is the fact that the credibility of co-defendant Sabrina Zunich was in issue in the post-trial pleadings. But the credibility of Sabrina was always in issue; it was the underlying issue during Appellant's trial. The weight assigned to Sabrina's testimony by the jury was the determining factor of Appellant's guilt. And in this case, the jury believed the version of events as testified to by Sabrina Zunich.

Appellant has failed to meet the requisite standard of review for this Court. Accordingly, jurisdiction should be declined.

## STATEMENT OF THE CASE AND FACTS

This case arose from the murder of Lisa Knoefel, Appellant's wife, by Sabrina Zurich, the Knoefels' foster daughter. During the course of the investigation into the murder, law enforcement learned of a sexual relationship between Appellant and Sabrina and also of discontent within the Knoefels' marriage. Further investigation revealed that Appellant and Sabrina plotted together to kill Lisa.

The Eleventh District Court of Appeals set forth a detailed recitation of the facts in *State v. Knoefel* ("*Knoefel I*"), 11th Dist. Lake No. 2014-L-088, 2015-Ohio-5207, ¶ 2-93.

Appellant was convicted following a jury trial. He filed a direct appeal with the Eleventh District Court of Appeals; his convictions were affirmed. *See Knoefel I*. Appellant then appealed to this Court, and jurisdiction was declined. *See 05/04/2016 Case Announcements*, 2016-Ohio-2807. Following the denial of jurisdiction by this Court, Appellant filed a petition for postconviction relief pursuant to R.C. 2953.21, a motion for a new trial, and a motion for disqualification of the Lake County Prosecutor's Office. All three pleadings were denied by the trial court. Appellant then appealed to the Eleventh District Court of Appeals for a second time. Again, Appellant's arguments were found to be without merit. *See Knoefel II*. Appellant now requests that this Honorable Court accept jurisdiction to review the trial court's denial of his post-trial motions.

All other pertinent facts will be discussed in the respective propositions of law.

## ARGUMENT IN RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW

### APPELLEE'S POSITION REGARDING PROPOSITION OF LAW NO. I

**THE DECISION TO GRANT A MOTION FOR A NEW TRIAL IS AN EXTRAORDINARY MEASURE THAT IS FACTUAL IN NATURE, WITHIN THE SOUND DISCRETION OF THE TRIAL COURT, AND REVIEWED ON A CASE-BY-CASE BASIS.**

In his first proposition of law, Appellant submits that “[n]ewly discovered evidence of a co-defendant’s false testimony is not merely cumulative impeachment evidence of an admitted liar, but is, rather, direct evidence of guilt or innocence which materially affects substantial rights and therefore warrants a new trial.” (Appellant’s Memorandum 6). The State disagrees with Appellant’s proposition of law, as the decision to grant a motion for a new trial is factual in nature and, thus, must be reviewed on a case-by-case basis; a bright-line rule regarding whether newly discovered evidence is cumulative is impractical, if not impossible.

To be sure, Crim.R. 33(A)(6) states that a new trial may be granted on motion of the defendant “when new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the trial.” To prevail on a motion for a new trial based upon the grounds of newly discovered evidence under Crim.R. 33(A)(6), the defendant must establish that the new evidence:

“(1) is of such weight that it creates a strong probability that a different result would be reached at the second trial; (2) has been discovered since trial; (3) could not in the exercise of due diligence have been discovered before trial;

(4) is material to the issues; (5) is not merely cumulative to former evidence; and (6) does not merely impeach or contradict the former evidence.”

*State v. Hawkins*, 66 Ohio St.3d 339, 350, 612 N.E.2d 1227 (1993), quoting *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947), at syllabus; *see also, e.g., State v. Rock*, 11th Dist. Lake No. 2005-L-005, 2005-Ohio-6291, ¶ 24. All six factors must be satisfied for the trial court to grant a new trial. *Rock* at ¶ 29.

This law is well-settled and decades old; it is not novel or evolving. And based on the fact that the newly discovered evidence is subject to a six-factor test, a bright-line rule would not only remove the discretion from the trial court, but could not possibly be drafted in such a way as to contemplate all of the factual scenarios that could arise. The application of the *Petro* factors is distinct to the facts of each case. In this case, the judge ruling on Appellant’s motion for a new trial was the same judge who presided over the trial. He was in the best position to determine whether the “newly discovered evidence” warranted a new trial. The judge found that it did not. Appellant also requests, without argument or support, that he would like this Court to define “merely cumulative.” The State submits that a definition of this term is unnecessary for a proper application of the *Petro* factors as it is generally understood in common parlance and does not take on meaning different than the typical usage.

In this case, the issue at trial was the credibility of Sabrina Zunich; Sabrina was Appellant’s foster daughter and Appellant’s wife’s murderer. Sabrina’s statements to police

and testimony inculpated Appellant in his wife's murder. Both parties understood that if the jury believed Sabrina, based on her testimony and other corroborating evidence, then Appellant would be found guilty; if the jury did not believe her, then he would be acquitted. Appellant was found guilty by the jury of each and every count of the indictment. Thus, Sabrina's credibility is not something first contemplated in Appellant's postconviction pleadings; it was the heart of the matter all along and the thrust of Appellant's defense.

But unfortunately for this Court's review, the facts as recited in Appellant's memorandum do not give an accurate portrayal of what transpired. For example, Sabrina never recanted her testimony. Additionally, the affidavits of the three inmates referenced by Appellant were partially or wholly refuted by the State. For example, James Amacher completely withdrew his prior statements. But a discussion of the facts is irrelevant, and any argument regarding the facts simply furthers the State's position that this issue is fact-specific and not one of great general or public interest.

The trial court properly applied the well-settled law to the facts of this case. Appellant is simply displeased with the outcome. The issues that he raises now are fact-specific and are not of great general or public interest. Therefore, this Court should decline review of Appellant's first proposition of law.

## APPELLEE'S POSITION REGARDING PROPOSITION OF LAW NO. II

**IT IS AN ABUSE OF DISCRETION TO DISMISS WHERE MATERIAL EVIDENCE OUTSIDE OF THE APPELLATE RECORD HAS BEEN PRODUCED TO ESTABLISH SUBSTANTIVE GROUNDS FOR RELIEF AND DEMONSTRATING GROSS VIOLATIONS OF A DEFENDANT'S CONSTITUTIONAL RIGHTS.**

In his second proposition of law, Appellant proposes that "it is an abuse of discretion to dismiss where material evidence outside of the appellate record has been produced to establish substantive grounds for relief and demonstrating gross violations of a defendant's constitutional rights." The State does not disagree with this statement of law. But this proposition of law does not accurately reflect what happened in this case.

In this case, Appellant filed a petition for postconviction relief. The trial court denied the petition without a hearing, relying on well-settled law. Appellant appealed the trial court's denial, and the trial court's decision was unanimously affirmed. Appellant now raises the very same argument that he raised below, specifically, that his trial counsel was ineffective.

Law regarding ineffective assistance of counsel in postconviction proceedings is well-settled. The specific arguments made by Appellant—that trial counsel was ineffective for failing to properly investigate and call witnesses on Appellant's behalf—are fact-specific and do not rise to the level of great general or public interest. Appellant has not proposed a new rule of law, has not alleged a misapplication of law by the trial court or court of appeals, and has not made any novel arguments regarding the rules for postconviction

relief. Appellant is simply displeased with the outcome of his case based on the courts' application of case law to the facts of his case.

Appellant suggests, without proof or reference to the record, that "the trial court held Appellant to an unreasonable standard, demanding evidence far beyond that required to entitle Appellant to a hearing." (Appellant's Memorandum 12). But in its judgment entry denying Appellant's petition, the trial court properly cited case law from this Court and the Eleventh District Court of Appeals. The trial court neither created nor applied a heightened or more demanding standard. Appellant further notes that the trial court would not accept his "expert report" as evidence outside of the record. But case law is clear: the rehashing of evidence contained in the record by an expert is not new evidence outside of the record. *See, e.g., State v. Jones*, 11th Dist. Ashtabula No. 2000-A-0083, 2002-Ohio-2074. Thus, the trial court did not err in either of these regards. All other arguments raised in this proposition of law are simply a rehashing of the arguments and exhibits that were thoroughly reviewed by both the trial court and the Eleventh District Court of Appeals. There are no unsettled issues that warrant this Court's review.

The arguments raised by Appellant regarding this proposition of law are fact-specific to his case and, thus, do not rise to the level of a substantial constitutional question or an issue of public or great general interest. Appellant fails to meet the standard for review by this Court and is simply displeased with the outcome of his appeal in the court

of appeals. Therefore, this Court should decline review of Appellant's second proposition of law.

**CONCLUSION**

For the foregoing reasons, the State of Ohio, Appellee herein, respectfully requests that this Honorable Court deny jurisdiction.

Respectfully submitted,

By: Charles E. Coulson, Prosecuting Attorney

By: /s Teri R. Daniel  
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**PROOF OF SERVICE**

A copy of the foregoing Memorandum in Response of Appellee, State of Ohio, was sent by regular U.S. Mail, postage prepaid, to counsel for the appellant, Joseph C. Patituce, Esquire, 26777 Lorain Road Suite 1, North Olmsted, OH 44070, and Megan M. Patituce, Esquire, 26777 Lorain Road Suite 1, North Olmsted, OH 44070 on this 17th day of May, 2019.

/s Teri R. Daniel  
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TRD/klb