

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 26AP-96
Plaintiff-Appellee,	:	(C.P.C. No. 19CR-3617)
v.	:	
	:	(REGULAR CALENDAR)
Patrick R. Sherman,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 22, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and
Mark R. Wilson, for appellee.

On brief: *Patrick R. Sherman*, pro se.

APPEAL from the Franklin County Court of Common Pleas

JAMISON, J.

{¶ 1} Defendant-appellant, Patrick R. Sherman, appeals from the judgment entry of the Franklin County Court of Common Pleas denying his motion for new trial. For the following reasons, we affirm the decision of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On July 25, 2019, appellant was indicted in Franklin C.P. case No. 19CR-3617 for attempted burglary, in violation of R.C. 2923.02 as it relates to R.C. 2911.12, a felony of the third degree; aggravated arson, in violation of R.C. 2909.02, a felony of the second degree; and menacing by stalking, in violation of R.C. 2903.211, a felony of the fourth degree.

{¶ 3} Appellant proceeded to trial and was found guilty of each count of the indictment on October 13, 2020. On October 20, 2020, a sentencing hearing was held. The trial court made findings that consecutive sentences were necessary when imposing 24 months as to Count 1, 7 years as to Count 2, and 12 months as to Count 3, with each count

to run consecutively to each other. Appellant was sentenced to a minimum indefinite 10-year sentence with the potential maximum penalty of up to 13.5 years to be served at the Ohio Department of Rehabilitation and Correction (“ODRC”). Appellant was notified that he is also required to register as an arson offender for life, pursuant to R.C. 2909.14, and that he will be, upon his release, on mandatory post-release control for 3 years. Appellant was credited with 357 days of jail-time credit.

{¶ 4} A notice of appeal was filed on November 20, 2020. On December 23, 2021, the jury verdict of the trial court was affirmed. *State v. Sherman*, 2021-Ohio-4532 (10th Dist.).

{¶ 5} Procedurally, on or around July 22, 2021, the plaintiff-appellee, State of Ohio, received a notification letter from Verizon in which the company disclosed that there was an issue with some of the voice over long-term evolution calls placed between March 1 and 17, 2021. (Jan. 13, 2026 Decision & Entry Den. Def.’s Mot. for New Trial at 2.) “Verizon reported that the ‘terminating’ and ‘originating’ cell site locations may have reported inaccurately, such that the terminating cell site was actually the originating cell site.” *Id.* On July 23, 2021, the state alerted appellant’s counsel about the letter by email.

{¶ 6} On April 19, 2022, appellant filed a pro se motion for new trial and two addendums to the new trial motion. Appellant received the Verizon letter from trial counsel in a letter dated May 2, 2022. The pro se motion was denied on December 29, 2022.

{¶ 7} On January 3, 2025, appellant subsequently filed both a motion for leave to file a motion for new trial and a motion for new trial pursuant to Crim.R. 33. The trial court found that there was newly discovered evidence or information from Verizon that was not available to appellant at the time of trial. This information could not be discovered through reasonable diligence within 120 days after the verdict. In an entry dated January 13, 2026, the trial court granted appellant’s motion for leave to file a motion for new trial and appointed counsel to represent him in the hearing.

{¶ 8} When appellant’s motion for new trial was filed, the motion endorsed a request for an evidentiary hearing thereon. Subsequently, the trial court held a hearing to take evidence and make findings as to whether the new trial motion should be granted on the grounds that newly discovered information was presented by the state. On January 13, 2026, the trial court denied appellant’s motion for new trial after holding the hearing. It is from this decision that appellant timely appeals.

II. ASSIGNMENTS OF ERROR

{¶ 9} Appellant assigns the following as trial court error:

1. THE TRIAL COURT ERRED TO APPELLANT'S PREJUDICE WHEN HIS MOTION FOR NEW TRIAL WAS IMPROPERLY DENIED WHEN THE TRIAL COURT FAILED TO PROPERLY REVIEW ALL OF THE EVIDENCE AFFECTED BY THE VERIZON ERROR, WHICH WOULD MEET THE STANDARD OF PROBABILITY OF CHANGING THE OUTCOME OF THE PROCEEDING.

2. THE TRIAL COURT ERRED AND DENIED APPELLANT DUE PROCESS WHEN IT APPLIED THE INCORRECT STANDARD OF LAW REGARDING MATERIALITY WHEN DETERMINING WHETHER TO GRANT THE MOTION FOR NEW TRIAL.

III. STANDARD OF REVIEW

{¶ 10} The decision of whether to grant a new trial, pursuant to Crim.R. 33, rests within the sound discretion of the trial court. *State v. Schiebel*, 55 Ohio St.3d 71 (1990), paragraph one of the syllabus. An appellate court reviews a trial court's determination of a Crim.R. 33 motion for an abuse of discretion. *Id.* at 76; *State v. Townsend*, 2008-Ohio-6518, ¶ 8 (10th Dist.). Our review of a trial court's decision resolving a motion for new trial is limited to determining whether the trial court abused its discretion. *State v. Grad*, 2024-Ohio-5710; *see also State v. Chavis-Tucker*, 2014-Ohio-3050, ¶ 5 (10th Dist.). *State v. Hoover-Moore*, 2015-Ohio-4863, ¶ 16 (10th Dist.). The denial of a motion for new trial is within the competence and discretion of the trial judge, and in the absence of a clear showing of abuse, the trial judge's decision on a motion will not be disturbed. *State v. Williams*, 1981 Ohio App. LEXIS 10332, *1 (10th Dist. May 21, 1981). An abuse of discretion occurs when the trial court's decision was unreasonable, arbitrary, or unconscionable. *See, e.g., State v. Weaver*, 2022-Ohio-4371, ¶ 24, quoting *State v. Gondor*, 2006-Ohio-6679, ¶ 60, quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

IV. LEGAL ANALYSIS

{¶ 11} We take the assignments of error out of order. To prevail on a motion for a new trial based on newly discovered evidence, the defendant must establish that the new evidence: (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) could not have been discovered before the trial through the exercise of due diligence, (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. Petro*, 148 Ohio St. 505 (1947), syllabus. For motions filed more than 120 days after trial, the defendant must show by clear and convincing proof that he was unavoidably prevented from discovering the evidence, meaning he had no knowledge of its existence and could not have learned of it within the time prescribed for filing the motion in the exercise of reasonable diligence. Crim.R. 33 (B). “[A] party is unavoidably prevented from filing a motion for new trial if the party had no knowledge of the existence of the ground supporting the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of reasonable diligence.” (Internal quotation marks deleted and citations omitted.) *Grad*, 2024-Ohio-5710, at ¶ 38. “ ‘Newly discovered evidence’ is ‘evidence of facts in existence at the time of trial of which the party seeking a new trial was justifiably ignorant.’ ” *State v. Holzapfel*, 2010-Ohio-2856, ¶ 20 (10th Dist.), quoting *State v. Love*, 2006-Ohio-6158, ¶ 43 (1st Dist.), citing *Campbell v. Am. Foreign S.S. Corp.*, 116 F.2d 926, 928 (2d Cir. 1941).

{¶ 12} The trial court found that appellant passed the first part of the test. The court found that there was newly discovered evidence and that appellant was unavoidably prevented from filing his motion for new trial because he had no knowledge of the existence and could not have learned of the existence of the Verizon letter within 120 days after the trial. The trial court appointed appellant counsel to represent him and scheduled a hearing on the matter.

{¶ 13} During the scheduled hearing, the trial court heard testimony from Detective James Howe, a 22-year veteran of the City of Columbus Division of Police. He is currently assigned to work in the Digital Forensics Unit. He was declared an expert without objection. The Verizon letter was available to Howe prior to his testimony. Although this letter could not have been discovered with diligence, the testimony from Howe that the information provided by Verizon indicated that the same towers were used, but you would not know if the towers were used “at the beginning or the end of the call.” (Nov. 21, 2023 Tr. at 18.)

{¶ 14} Appellant posits that the trial court “unreasonably claimed that this call—and only this call out of the hundreds of calls that were claimed to be made by the Appellant—was the one that supported Appellant’s guilt because it somehow would not have been impacted by the error in Verizon’s records.” (Appellant’s Brief at 3.) Appellant

misinterpreted the trial court's reasoning. Based on the testimony, the court is saying that this letter alone does not meet the required prong of disclosing a strong probability that it will change the result if a new trial is granted. More specifically, the one call in question had the same originating and terminating tower, meaning the error detailed in the Verizon letter could not have created an error of the location of the cellphone in relationship to the time and location from which the call was made. In other words, there is no showing that if a new trial were granted that the phone records of one call would impact the trial enough to bring a different result.

{¶ 15} More importantly, there is sufficient other evidence and testimony to support the conviction without cellphone records. The victim, T.J., provided testimony during the trial regarding threats and that when she looked out the window of her home, "she could see Sherman standing on her front porch." *Sherman*, 2021-Ohio-4532, at ¶ 10 (10th Dist.). The trial court heard testimony from Columbus Division of Police Officer Alex Zamora, who responded to the scene. He testified that the "front door appeared to be smoking and had a large black burn mark on it." *Id.* at ¶ 12.

{¶ 16} Firefighter Lew Smith, with the Columbus Division of Fire, responded with an ignitable-liquids detection canine. He testified he took samples and swabs from the areas where the canine had alerted, which later tested positive for the presence of gasoline. *Id.* at ¶ 13. Investigator Derrick Young, with the Columbus Division of Fire, testified that his investigation indicated that the fire was not caused by natural occurrences or accidental means. He also testified that T.J. received two calls from the same phone number shortly before T.J.'s 9-1-1 calls. Further, he testified that the same phone number that placed the calls shortly before T.J.'s 9-1-1 calls also placed two additional phone calls to T.J.'s phone around 2:00 a.m. using a caller ID blocking feature. *Id.* at ¶ 14.

{¶ 17} Appellant's own letter written to K.S. that was intercepted by ODRC was entered into evidence in the trial court. The letter is a request to get "the witnesses' names ASAP. . . . Also, I need this bitch who put the bogus case on me, I need her clapped ASAP." (Oct. 7, 2020 Tr. Vol. II at 414.) Appellant writes a detailed, lengthy solution to prevent T.J. from testifying and gives her address. In the letter, he wrote " 'get with my junior. His number You all figure out how to smash this hoe. Her number is Don't call on your phone. . . . I wasn't someone to knock a chunk out that fat bitch's head. The world

needs to eliminate people like her.’ ” *Sherman* at ¶ 15, quoting Tr. Vol. II at 417-419. The jury deliberated and found appellant guilty of all charges in the indictment.

{¶ 18} “The language of Crim.R. 33 makes it clear that a trial court should not grant a new trial ‘ “unless it affirmatively appears from the record that a defendant was prejudiced by one of the grounds stated in the rule, or was thereby prevented from having a fair trial.” ’ ” *State v. Golden*, 2014-Ohio-2148, ¶ 8 (10th Dist.), quoting *State v. Salinas*, 2010-Ohio-4738, ¶ 41 (10th Dist.), quoting *Columbus v. Carroll*, 1996 Ohio App. LEXIS 3660, *13 (10th Dist. Aug. 27, 1996), citing Crim.R. 33(E). Even if appellant did not have the newly discovered evidence, there is otherwise compelling evidence upon which his conviction rests. The availability of the newly discovered evidence did not yield a strong probability that there would be a different outcome. Therefore, we overrule appellant’s second assignment of error.

{¶ 19} Lastly, appellant’s first assignment of error questions the use of *Petro* and challenges the legal standard used by the trial court. In reviewing the record of the hearing and underlying trial record, we find that the trial court applied the correct legal standard. The court found under the *Petro* standard that although there was newly discovered evidence that was not available at the time of the trial, that there is not a strong probability that the Verizon letter would change the outcome if a new trial were granted. We find that appellant failed to meet each of the six elements in *Petro* required to be granted a new trial. We also find that the trial court’s decision is not unreasonable, arbitrary, or unconscionable. Therefore, we find that the trial court did not abuse its discretion when denying appellant’s motion for new trial. Therefore, we overrule appellant’s first assignment of error.

V. CONCLUSION

{¶ 20} Based on the foregoing, the trial court applied the correct legal standard and did not abuse its discretion when the appellant’s motion for new trial was denied. Having overruled both the first and second assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and DINGUS, JJ., concur.
