

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ANDRE M. YEAGER,

Defendant-Appellant.

**CASE NOS. 2022-L-048
2022-L-050**

Criminal Appeals from the
Court of Common Pleas

Trial Court No. 2021 CR 001041

OPINION

Decided: August 7, 2023

Judgment: Affirmed

Charles E. Coulson, Lake County Prosecutor, *Teri R. Daniel*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Andre M. Yeager, pro se, PID #A784-808, Richland Correctional Institution, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, OH 44905 (Defendant-Appellant).

EUGENE A. LUCCI, J.

{¶1} Appellant, Andre M. Yeager, appeals from the judgment of the Lake County Court of Common Pleas denying his motion for a new trial. For the reasons discussed in this opinion, we affirm the trial court’s rationale for its judgment, and in light of the recent resolution of appellant’s previously pending direct appeal of his conviction, the trial court now possesses jurisdiction to address appellant’s motion for new trial.

{¶2} After a trial by jury, appellant was found guilty on one count of grand theft, in violation of R.C. 2913.02(A)(1), a felony of the fourth degree; one count of breaking

and entering, in violation of R.C. 2911.13(A); and one count of vandalism, in violation of R.C. 2909.05(B)(1)(a). On January 13, 2022, appellant was sentenced to 17 months of imprisonment for grand theft; 11 months of imprisonment for breaking and entering; and 11 months of imprisonment for vandalism. The terms were ordered to be served consecutively to one another for an aggregate term of 39 of months imprisonment.

{¶3} On February 9, 2022, appellant filed a notice of appeal of his convictions with this court. That appeal was assigned Case No. 2022-L-008. In that matter, appellant filed four extensions to file his brief. His final motion, filed on November 2, 2022, was granted. Appellant ultimately filed his brief, pro se, as well as a supplemental brief. The state duly responded. The parties waived oral argument and the matter was heard on the briefs on June 27, 2023.

{¶4} Well prior to this court's consideration of the merits of appellant's appeal from his conviction, appellant filed a "Verified Motion for Leave to File a Delayed Motion for New Trial" on April 6, 2022. The trial court denied the motion, observing:

In *State v. Andre Yeager*, (March 17, 2004), Summit App. No. 21676, 2004-Ohio-1239, a case Defendant should be familiar with, the Ninth District Court of Appeals addressed the issue which is currently before this Court with Defendant's filing of his Motion for a New Trial. In *Yeager*, the defendant filed a motion for a new trial with the trial court while his direct appeal was pending in the Ninth District Court of Appeals. The court held that defendant's notice of direct appeal divested the trial court of jurisdiction to consider his motion for a new trial.

Likewise, in this case, Defendant's direct appeal is currently pending in the Eleventh District Court of Appeals, and thus, this Court is divested of jurisdiction to address Defendant's Motion for a New Trial.

{¶5} Appellant now appeals the trial court's judgment and assigns the following seven assignments of error:

“[1.] The trial court abused its discretion when it failed to hold a hearing on appellant’s motion for leave to file a motion for new trial, when the record and circumstances support appellant’s claim that he was unavoidably prevented from discovering the withheld exculpatory Richmond Hts. Speedway Crime-video evidence of the actual passenger with Richard Daniels in violation of *Brady v. Maryland*, *State v. Bethel*, *Schlup v. Delo*, Crim.R. 33(A)(6) and (B) at issue that was only compiled in February 25, 2002 and March 15, 2022, within 117-days after trial. [Sic.]

“[2.] The trial court abused its discretion when if failed to find that appellant’s verified motion for leave to file motion for new trial based on newly discovered withheld exculpatory evidence was filed timely within 117-days after trial. [Sic.]

“[3] The trial court abused its discretion and violated appellant’s due process rights when it denied appellant of any fair mechanism for factual development on his verified motion for leave to file motion for new trial based on newly discovered exculpatory evidence from the February 22, 2021, Richmond Hts. Speedway crime-video of the actual passenger with Richard Daniels that was withheld by the prosecutor. [Sic.]

“[4.] Appellant’s due process right to a fair trial was violated when the prosecutor suppressed the favorable February 22, 2021 Richmond Hts. Speedway crime-video of the actual passenger with Richard Daniels and appellant discovered the exculpatory evidence within 117-days after trial.

“[5.] Trial court erred when it ruled that it lacked jurisdiction to consider the appellant’s verified motion for leave to file motion for new trial because an appeal was pending contrary to *State v. Davis*, 2011-OHO-5028. [Sic.]

“[6.] Appellant was denied due process of law when the trial court denied his verified motion without allowing him time to respond to the states motion in violation of the United States Constitution Fourteenth Amendment. [Sic.]

“[7.] Trial court erred by failing to make a ruling if appellant was required to demonstrate that he was unavoidably prevented from discovering the newly discovered withheld exculpatory crime-video evidence since he filed his motion before the one hundred and twenty day time period.”

{¶6} We shall address appellant’s fifth assignment of error first, as it addresses the specific merits of the trial court’s ruling. Under this assigned error, appellant argues the trial court erred when it concluded it lacked jurisdiction to rule upon appellant’s motion for a new trial because the Supreme Court of Ohio, in *State v. Davis*, 131 Ohio St.3d 1, 2011-Ohio-5028, 959 N.E.2d 516, created an exception to the jurisdictional rule. We do not agree with appellant’s application of *Davis*.

{¶7} Initially, it is well-settled that when an appeal is taken from a trial court’s judgment, the trial court is divested of jurisdiction, except to take action in aid of that appeal. See e.g. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1979). Further, once “a case has been appealed, the trial court retains all jurisdiction *not inconsistent* with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” (Emphasis added.) *State ex rel. Newton v. Court of Claims*, 73 Ohio St.3d 553, 558, 653 N.E.2d 366 (1995) citing *Yee v. Erie Cty. Sheriff’s Dept.*, 51 Ohio St.3d 43, 44, 553 N.E.2d 1354, 1355 (1990).

{¶8} In support of the trial court’s position that it lacked jurisdiction to consider the merits of appellant’s motion for a new trial, the trial court cited a matter in which appellant was a party, i.e., *State v. Yeager*, 9th Dist. Summit No. 21676, 2004-Ohio-1239. In that matter, the Ninth Appellate District observed: “[a] motion for a new trial is inconsistent with a notice of appeal of the judgment sought to be retried.” *Yeager* at ¶ 8, quoting *State v. Harmon*, 9th Dist. Summit No. 21465, 2003-Ohio-5052, ¶ 9, quoting *State v. Loper*, 8th Dist. Cuyahoga Nos. 81297, 81400, 81878, 2003-Ohio-3213, ¶ 104. The basis for this conclusion is patent; namely, after a defendant has filed a notice of appeal from a criminal conviction, the possibility that the defendant’s motion

might be granted would fundamentally interfere with the appellate court's jurisdiction to reverse, modify, or affirm the appealed conviction.

{¶9} Appellant, however, maintains *Davis* affords a trial court jurisdiction to rule on a motion for new trial, notwithstanding a notice of appeal which would otherwise divest such jurisdiction from the trial court. Appellant's reading of *Davis* is incorrect.

{¶10} In *Davis*, 2011-Ohio-5028, the defendant was convicted of various crimes, including aggravated murder, and sentenced to death. The Supreme Court affirmed his convictions and death sentence. *Id.* at ¶ 2. Several years later, the defendant filed a motion for a new trial based upon newly discovered evidence, pursuant to Crim.R. 33(B). *Id.* at ¶ 3. The trial court denied the motion, and the appellate court affirmed, concluding the trial court lacked jurisdiction to act on the defendant's motion. *Id.* at ¶ 7-8. Specifically, the court determined "the trial court's granting of [the defendant's] motion for a new trial would be inconsistent with the judgment of the Ohio Supreme Court, affirming [the defendant's] convictions and sentence." *State v. Davis*, 5th Dist. Licking No. 09-CA-0019, 2009-Ohio-5175, ¶ 12.

{¶11} The Supreme Court reversed the Fifth District's opinion and judgment concluding not only did the trial court have jurisdiction to address the motion for new trial based upon newly discovered evidence, *Davis*, 2011-Ohio-5028, at ¶ 22, but also that the law-of-the-case doctrine does not *prevent* a trial court from considering a motion for new trial on a newly-discovered-evidence claim. *Id.* at ¶ 37. In other words, the Court held that the previous affirmance of the defendant's conviction does not operate to prevent the trial court from addressing the defendant's motion for a new trial based on newly

discovered evidence. *Id.* at paragraph two of the syllabus. *Davis* is fundamentally distinguishable from this matter.

{¶12} Here, appellant's direct appeal was *pending* in this court when he filed his motion for a new trial. At that time, there had been no disposition of the direct appeal from appellant's conviction. In short, *Davis* is inapplicable.

{¶13} Because, at the time of the trial court's judgment, appellant's direct appeal from his conviction was still pending in this court, the trial court properly determined that it lacked jurisdiction to rule on appellant's motion for a new trial because the granting of such relief would conflict with this court's jurisdiction to fully review the pending final order. See, e.g., *State v. Bozek*, 11th Dist. Portage No. 2015-P-0055, 2016-Ohio-1365, ¶ 12. The remainder of appellant's assignments of error challenge the procedure the trial court employed in denying his motion. Because, however, the trial court lacked jurisdiction to rule on the motion, these contentions are without merit.

{¶14} Recently, on July 24, 2023, this court affirmed appellant's direct appeal of his conviction. See *State v. Yeager*, 11th Dist. Lake No. 2022-L-008, 2023-Ohio-2541. Because the appeal has been resolved, the trial court now has jurisdiction to address the substance of appellant's motion for new trial.

{¶15} Appellant's assignments of error are overruled. Because appellant's direct appeal of his conviction is no longer pending in this court, however, the trial court is free to proceed to rule on the merits of appellant's motion for new trial.

{¶16} For the reasons discussed in this opinion, the judgment of the Lake County Court of Common Pleas is affirmed.

JOHN J. EKLUND, P.J.,

MATT LYNCH, J.,

concur.