

[Cite as *State v. Lett*, 2023-Ohio-2580.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 111350
 v. :
 :
 ANTHONY LETT, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 27, 2023

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. CR-16-608659-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Gregory J. Ochocki, Assistant Prosecuting Attorney, *for appellee*.

Anthony Lett, *pro se*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant Anthony Lett (“Lett”), *pro se*, appeals from the denial of his petition for postconviction relief. For the reasons that follow, we affirm the decision of the trial court.

Procedural and Factual History

{¶ 2} On August 23, 2016, Lett was indicted for one count of rape (Count 1), one count of attempted murder (Count 2), three counts of kidnapping (Counts 3, 7, and 12), two counts of aggravated robbery (Counts 4 and 8), two counts of aggravated burglary (Counts 6 and 11) and three counts of felonious assault (Counts 5, 9, and 10) for an incident that occurred on April 24, 2016. Additionally, the first count of kidnapping, Count 3, contained a sexual motivation specification; Counts 1 through 11 each contained one-and three-year firearm specifications; and Count 12 contained a one-year firearm specification. Finally, all counts contained a repeat-violent-offender specification and a notice of Lett’s prior conviction for kidnapping.

{¶ 3} The case proceeded to a jury trial on January 30, 2018. The testimony is summarized in Lett’s direct appeal of his conviction, *State v. Lett*, 8th Dist. Cuyahoga No. 106973, 2019-Ohio-532 (“*Lett I*”). We will state the relevant portions here.

{¶ 4} Candace Cook (“Cook”) and her husband, Kumar Strowder (“Strowder”), were enjoying an evening at home alone. Cook stepped out of the shower and heard Strowder answer a knock on the door. When she came downstairs, she found Strowder sitting at the dining room table with Lett, a female from the neighborhood and codefendant James Underwood (“Underwood”).

{¶ 5} Lett asked Strowder, “What was the take for today?” Strowder owned a business and sometimes made service calls on weekends. Cook asked them to leave and Lett and Underwood pulled out guns and aimed them at Strowder and

Cook. Lett and Underwood proceeded to rob the pair, demand that Cook get undressed, and pushed Cook down the stairs causing her to fall. *Lett I* at ¶ 5-6.

{¶ 6} Strowder managed to escape out the door and run away. Underwood shot at and hit Strowder, but Strowder kept running and made it to a gas station where he sought help. The gas station attendant called 911. Strowder was taken to the hospital. In the meantime, Lett forced Cook into the basement and attempted to rape her but was interrupted by Underwood saying that he thought he shot Strowder. When Lett left to check, Cook forced her way out a basement window, cutting herself severely in the process, and drove herself to South Pointe Hospital. *Id.* at ¶ 7-9.

{¶ 7} Detective Bruce Vowell testified at trial. At the time, he was a detective with the Cleveland Police Department Sex Crimes and Child Abuse Unit. He was assigned the case on April 29, 2016, after it was disclosed there was an allegation of rape. Detective Vowell made contact with the previously assigned detective and got a summary of the victims' interviews. He also asked that detective to generate a report summarizing the investigation thus far. Detective Vowell arranged for a blind administrator to show Cook a photo lineup. Detective Vowell also interviewed Cook in person. Based on that interview, he requested that a blind administrator show Cook additional photo lineups that included Lett and Underwood. Detective Vowell later interviewed both Cook and Strowder together in his office.

{¶ 8} Detective Vowell also took pictures of Cook’s and Strowder’s injuries, subpoenaed medical records, and obtained DNA samples from Strowder and, after obtaining a search warrant, from Lett.

{¶ 9} The jury found Lett guilty of one count of attempted murder (Count 2), two counts of kidnapping (Counts 7 and 12), two counts of aggravated robbery (Counts 4 and 8), two counts of aggravated burglary (Counts 6 and 11) and one count of felonious assault (Count 5). The jury also found him guilty of the three-year firearm specifications associated with Counts 2, 4, 5, 6, 7, 8, and 11. In a separate hearing, the trial court found Lett guilty of the notice-of-prior-conviction specifications and the repeat-violent-offender specifications associated with each count. Lett was sentenced to an aggregate term of 20 years in prison.

{¶ 10} Lett appealed his convictions. The transcript was filed with this court on May 2, 2018. In his direct appeal, Lett challenged the manifest weight of the evidence on all charges; sufficiency of the evidence to support the felonious assault conviction; and the imposition of consecutive sentences. This court affirmed his convictions and sentence on February 14, 2019.

{¶ 11} Lett, through counsel, timely filed a petition for postconviction relief with the trial court on April 26, 2019. Lett was represented by the public defender’s office in the trial court. He alleged that he was denied his Fourteenth Amendment right to due process when the state failed to disclose material pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed.2d 215 (1963). Specifically, he alleged that the state failed to disclose an internal affairs investigation report (“IA Report”)

that showed that Detective Vowell had been accused of misconduct, including conduct that involved criminal charges. Lett attached a copy of the IA report and an affidavit from a different attorney with the public defender's office. The affidavit alleged that the attorney had received an email from the trial court on March 13, 2018, that revealed the state disclosed *Brady* material regarding Detective Vowell in an unrelated bench trial that was not provided to Lett during his trial. The emails were not attached to the petition.

{¶ 12} The trial court denied Lett's petition for postconviction relief without a hearing. In its journal entry, the trial court detailed the findings of fact and conclusions of law. The relevant conclusions were as follows:

The court finds none of the information provided in the internal affairs log regarding Detective Vowell demonstrates a *Brady* violation. The information relating to Detective Vowell's 2011 unauthorized use of property/computer system was publicly available at the time of Lett's trial, and reasonable minds could disagree regarding whether the information relating to Detective Vowell's 2002 administrative sanction for theft would be admissible impeachment evidence.

The court finds there is no reasonable probability that had the information in the internal affairs log regarding Detective Vowell been disclosed, the jury verdict would have been different. Detective Vowell's role in this case was primarily ministerial and the trial testimony demonstrated his contributions to the investigation were limited to: directing a blind administrator to show photo lineups to the victims, taking victim statements, taking photographs of the victim's injuries, obtaining buccal swabs from the male victim and Lett, and issuing subpoenas for the victim's medical records. The court finds Detective Vowell's credibility had no bearing on the jury's decision.

{¶ 13} The court further noted that the noncriminal allegations in the IA report may not have been admissible under Evid.R. 608(B) and 609, nor would the

information have been clearly probative of Detective Vowell’s truthfulness. Finally, the court found that even if the information had been disclosed by the state prior to trial, “there [was] no reasonable probability that this court’s verdict would have been different. There was ample evidence to support this court’s guilty verdicts in this matter.”

{¶ 14} Lett filed a notice of appeal to this decision on March 14, 2022. His first brief, filed on December 30, 2022,¹ was stricken for failure to comply with App.R. 16 that requires (1) a table of contents, (2) a table of cases; (3) a statement of assignments of error; (4) a statement of the issues presented for review; (5) a statement of the case; (6) a statement of facts; (7) an argument addressing each assignment of error; and (8) a conclusion stating the relief sought. Appellant filed an amended brief on January 11, 2023.

{¶ 15} Appellant’s amended brief does not strictly comply with App.R. 16; however, he does present several issues for our review although he does not list them as assignments of error. Accordingly, we will address his assigned errors in a manner to best capture the arguments made.²

¹ The appeal was dismissed for failure to file a brief. Appellant filed a motion for reconsideration that was granted, after which he filed the brief that was stricken and then the brief that this court accepted for review.

² Appellant’s assigned errors are listed as brief headings followed by extensive citation to law and argument. The headings, however, do not fully capture Lett’s arguments.

Law

Standard of Review

{¶ 16} A trial court’s denial of a petition for postconviction relief is reviewed under the abuse of discretion standard. *State v. Hatton*, 169 Ohio St.3d 446, 2022-Ohio-3991, 205 N.E.3d 513, ¶ 38. An abuse of discretion is more than an error of law or judgment; “it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A court abuses its discretion when its decision is contrary to the law, unreasonable, not supported by the evidence, or grossly unsound. *Cleveland v. Greear*, 8th Dist. Cuyahoga No. 108190, 2020-Ohio-29, ¶ 19.

Postconviction Review

{¶ 17} Before examining whether the trial court’s decision was an abuse of discretion, a review of the postconviction process is necessary. A petition for postconviction relief allows a defendant to collaterally attack

a criminal judgment, in which the petitioner may present constitutional issues to the court that would otherwise be impossible to review because the evidence supporting the issues is not contained in the record of the petitioner’s criminal conviction. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999); *State v. Carter*, 10th Dist. Franklin No. 13AP-4, 2013-Ohio-4058, ¶ 15. Postconviction review is not a constitutional right but, rather, is a narrow remedy that affords a petitioner no rights beyond those granted by statute. *Calhoun* at 281-282. A postconviction relief petition does not provide a petitioner a second opportunity to litigate his or her conviction. *State v. Hessler*, 10th Dist. Franklin No. 01AP-1011, 2002-Ohio-3321, ¶ 32.

State v. Osborn, 8th Dist. Cuyahoga No. 107423, 2019-Ohio-2325, ¶ 7.

{¶ 18} A petitioner has the initial burden of demonstrating a cognizable claim of constitutional error. *Id.*, citing R.C. 2953.21(D); *Hessler* at ¶ 33. Once he has met that hurdle, the petitioner is entitled to a hearing on the petition for postconviction relief. *Id.* The trial court is therefore tasked with determining whether the petitioner has presented evidence that “there was such a denial or infringement of the person’s rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States.” *Osborn* at ¶ 9, quoting R.C. 2953.21(A)(1)(a); *Calhoun* at 282-283. If the petitioner fails to meet this burden, the trial court may deny the petition without a hearing. R.C. 2953.21(D).

Analysis

{¶ 19} Lett initially focuses on the trial court’s final finding, that there was ample evidence to support the verdict, and suggests that the trial court improperly applied a manifest weight of the evidence standard rather than considering the alleged *Brady* material when it denied his petition.

{¶ 20} After a review of the record and of the trial court’s finding, we conclude that Lett misunderstood the trial court’s ruling. The trial court adopted the findings of fact in *Lett I* and then analyzed Lett’s allegations to determine whether the state committed a *Brady* violation.

Review of A Brady Violation

{¶ 21} Lett’s petition for postconviction relief centered on the argument that the state withheld *Brady* material when it failed to disclose Detective Vowell’s internal affairs investigation file. Lett argues that this information was material and

would have impeached Detective Vowell’s testimony. In order for this court to find a *Brady* violation, Lett must establish that (1) the suppressed evidence is favorable to him, “either because it is exculpatory, or because it is impeaching”; (2) the evidence was suppressed by the state, “either willfully or inadvertently”; and (3) that “prejudice * * * ensued.” *State v. Bethel*, 167 Ohio St.3d 362, 2022-Ohio-783, 192 N.E.3d 470 ¶ 19, quoting *Strickler v. Greene*, 527 U.S. 263, 281-282, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). The defendant bears the burden of proving that a *Brady* violation rises to the level of a denial of due process. *State v. Allen*, 8th Dist. Cuyahoga No. 103492, 2016-Ohio-7045, ¶ 11.

[F]avorable evidence is material, and constitutional error results from its suppression by the government, “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”

Bethel at ¶ 19, citing *Kyles v. Whitley*, 514 U.S. 419, 433, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995), quoting *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

{¶ 22} Whether withheld evidence is material under *Brady* is a matter of law for which the de novo standard of review applies. *Allen* at ¶ 11. De novo review requires an independent analysis of the record without deference to the trial court’s decision. *Demeraski v. Bailey*, 2015-Ohio-2162, 35 N.E.3d 913, ¶ 11 (8th Dist.).

The Trial Court Properly Reviewed the Evidence

{¶ 23} The sole question before the trial court was whether the state violated *Brady* by withholding the IA report pertaining to Detective Vowell. Preliminarily,

we note that the state determined that Det. Vowell's IA Report contained information requiring disclosure to a different defendant in a subsequent case. Presumably, the state determined the information was potentially favorable to the defense in the other case and or either impeaching or exculpatory. However, we do not know Det. Vowell's involvement in that other case nor do we know whether his role impacted the state's decision to provide the IA report to that defendant and not to Lett. We, therefore, review the impact of the failure to provide the IA report under the circumstances in this case.

{¶ 24} Our independent review of the IA report establishes that although Detective Vowell was accused of misconduct seven times between October 2002 and January 2011, he was formally disciplined for only one misconduct accusation labeled "theft in office (secondary employment)." This occurred in 2002, and he was suspended for 15 days as a result. Nine years later in 2011, Detective Vowell was indicted for unauthorized use of property or computer system; however, the state moved to terminate those charges, and the indictment was dismissed. The remaining allegations that occurred between 2002 and 2011 did not result in administrative or criminal charges. Additionally, three of the allegations were designated as justified, unfounded, and unsubstantiated. The remaining two incidents were closed without further action.

{¶ 25} In order to satisfy the first prong of *Brady*, Lett needed to first establish that this evidence was both favorable to him and exculpatory or impeaching. Favorable evidence includes "impeachment evidence bearing on the

credibility of the state's witnesses." *State v. Glover*, 2016-Ohio-2833, 64 N.E.3d 442, ¶ 41 (8th Dist.).

{¶ 26} Any party may impeach the credibility of a witness. Evid.R. 607. Pursuant to Evid.R. 608, there are limits to the methods that a party may impeach a witness. A party may challenge the credibility of a witness on cross-examination with specific instances of conduct if that conduct is clearly probative of the witness's character for truthfulness or untruthfulness.

{¶ 27} The record contains insufficient information about the 2002 incident to ascertain whether it would have been probative of Detective Vowell's character for truthfulness or untruthfulness. We are mindful that this district has held that a theft offense, "whether alleged or admitted, is not probative — and certainly not 'clearly' probative — on the issue of plaintiff's truthfulness (that is, a theft does not necessarily involve the telling of a falsehood)." *Cindric v. Edgewater Yacht Club*, 8th Dist. Cuyahoga No. 68365, 1996 Ohio App. LEXIS 1793, at 16 (May 2, 1996). Other districts have noted that at common law, a theft offense involves dishonesty and can be used to impeach a witness. *See State v. Stanford*, 6th Dist. Huron No. H-17-010, 2018-Ohio-2983, ¶ 34. Due to the nature of the charge and lack of underlying facts available, we must agree with the trial court's finding that the incident was not clearly probative of Detective Vowell's truthfulness or untruthfulness under Evid.R. 608.

{¶ 28} With respect to Detective Vowell's 2011 incident, it is important to note that the charges were dropped. Evid.R. 609 permits impeachment by prior

conviction. Dismissed charges would not be admissible to impeach. However, although the charges were dismissed, the record is silent as to any administrative sanction. The IA report merely notes, “arrested-criminal charges dropped-admin violation.” The language “admin violation” leaves open the possibility that Det. Vowell’s was sanctioned administratively; however, there is not sufficient information to discern if an administrative sanction was levied. Consequently, while the evidence could be impeaching, there is insufficient evidence in the record to determine whether it would be clearly probative to Det. Vowell’s truthfulness or untruthfulness under Evid.R. 608.

{¶ 29} Accordingly, Lett has failed to establish that Detective Vowell’s two misconduct accusations were impeaching in violation of *Brady*.

{¶ 30} Regardless of the foregoing, we cannot find that Lett was prejudiced by the state’s failure to provide this evidence prior to trial as required by the third prong of the *Brady* test. Detective Vowell’s involvement in the case was minor. He was primarily involved with gathering statements, pictures, managing the photo lineup process, obtaining medical records, and buccal swabs for DNA analysis. All of Detective Vowell’s testimony was confirmed by or supported by the testimonies of other witnesses.

{¶ 31} As the trial court noted, there was overwhelming evidence in support of the jury’s finding of guilt. Lett was not a stranger to Cook nor Strowder. Both testified that he was someone who was familiar to them from the neighborhood. Both Cook and Strowder identified Lett from the witness stand as the person who

attacked them. Furthermore, both Cook and Strowder identified their medical records, the photos taken of their injuries, and the photo lineups that identified Lett.

{¶ 32} Although Detective Vowell collected samples for DNA analysis, that evidence was inconclusive as to Lett's involvement in the rape allegation. Ultimately, the lab determined that the DNA from Cook's rape kit did not belong to Lett, it belonged to Strowder, her husband. Furthermore, Lett was not convicted of the rape charge.

{¶ 33} Detective Vowell's involvement in the case was supplementary. Impeaching Detective Vowell would have had no impact on Lett's conviction. All of Detective Vowell's contributions were supported by other witnesses' testimonies, witnesses who had direct knowledge. There was overwhelming evidence in the record to support the jury's finding of guilt. Accordingly, Lett has failed to establish that he was prejudiced by the state's failure to disclose the IA report.

{¶ 34} Accordingly, this assignment of error is overruled.

The Trial Court did not Consider the Alleged *Brady* Material in Isolation

{¶ 35} Next, citing *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995), Lett argues that the trial court erred when it failed to look at the cumulative effect of the errors in deciding there was no *Brady* violation. Lett misunderstands the ruling in *Kyles*. In *Kyles* the evidence was both exculpatory and impeaching, as well as suppressed by the state, satisfying the first two *Brady* requirements. The question before the court was solely on the third *Brady* requirement of prejudice. The Supreme Court specifically addressed whether the

court of appeals erred when it analyzed the suppressed evidence individually to determine prejudice rather than review the cumulative effect of the suppression of exculpatory and impeaching evidence. The court found that in analyzing the prejudice arm of the *Brady* test, courts should look at the cumulative effect of all errors, not their individual impact.

{¶ 36} *Kyles* is inapplicable to this case because of the two incidents for which misconduct was found, the record did not establish that either incident was clearly impeaching. The review established by the *Kyles* case is therefore inapplicable.

{¶ 37} Accordingly, we overrule this assigned error.

The Court's Findings with respect to the 2002 Incident were not Erroneous

{¶ 38} In his next challenge, Lett argues that the trial court erred when it determined that the withheld evidence would have been inadmissible for impeachment purposes. Lett argues that the trial court considered whether the evidence would be used to attack the detective's "general credibility" or "character for truthfulness" rather than his credibility for a specific incident. He also argues that his Sixth Amendment "right to cross-examine Detective Vowell as to bias or interest," with respect to a specific issue or incident was violated by the trial court's ruling. Lett cites to *United States v. Garrett*, 542 F.2d 23 (6th Cir.1976), in support of his argument; however, *Garrett* does not support his position.

{¶ 39} *Garrett* was a drug case, where the chief witness against the defendant was a police officer who had been suspended shortly before trial for failing to take a urine test to determine whether he had used hard drugs. The appellate court determined that it was error for the trial court to limit the cross-examination of the officer because given the nature of the officer's misconduct, it might have been directly tied to the facts of the case and there was a possibility that the officer's testimony was tainted by bias. Because the officer's misconduct was directly tied to the conduct that Garrett was accused of, the court found that the defense should have been permitted to conduct a more particular attack on the witness's credibility, noting that the conduct "was related to the issues and personalities in the case at hand." *United States v. Garrett*, 542 F.2d 23, 27 (6th Cir.1976).

{¶ 40} Lett attempts to compare his case to *Garrett* by suggesting that Det. Vowell may have mishandled evidence and lied about it to preserve his image as a capable police officer to prove that he was capable of doing his job. The past allegations of misconduct for Det. Vowell had no direct connection to Lett's case. Accordingly, *Garrett* is inapplicable, and Lett's Sixth Amendment violation claim fails.

The Trial Court did not err when it Summarily Denied Lett's Petition

{¶ 41} Finally, Lett argues that the trial court erred when it failed to hold an evidentiary hearing on this petition for postconviction relief. Since Lett's petition failed to establish a *Brady* violation, the trial court did not abuse its discretion when it denied Lett's petition without a hearing. A petitioner is only entitled to a hearing

if they have met the initial burden of establishing a cognizable constitutional claim. *State v. Osborn*, 8th Dist. Cuyahoga No. 107423, 2019-Ohio-2325. Lett has failed to do so.

{¶ 42} Accordingly, this assigned error is overruled.

{¶ 43} Judgment affirmed.

It is ordered that appellee recover from 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. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

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

EMANUELLA D. GROVES, JUDGE

MARY EILEEN KILBANE, P.J., CONCURS IN JUDGMENT ONLY;
LISA B. FORBES, J., CONCURS IN JUDGMENT ONLY