

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 115471
	:	
v.	:	
	:	
SHANNON LICCARDO,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: APPLICATION DENIED
RELEASED AND JOURNALIZED: October 20, 2026

Cuyahoga County Court of Common Pleas
Case No. CR-23-682274-A
Application for Reopening
Motion No. 598449

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Owen W. Knapp, Assistant Prosecuting Attorney, *for appellee*.

Shannon Liccardo, *pro se*.

MICHAEL JOHN RYAN, J.:

{¶ 1} Shannon Liccardo (“Liccardo”), pro se, has filed an application for reopening pursuant to App.R. 26(B) and *State v. Murnahan*, 63 Ohio St.3d 60 (1991), based on claims of ineffective assistance of appellate counsel. Liccardo is

attempting to reopen this court’s judgment in *State v. Liccardo*, 2026-Ohio-1864 (8th Dist.), in which this court affirmed Liccardo’s convictions and sentence. For the reasons that follow, we deny Liccardo’s application to reopen the appeal.

I. Procedural and Factual History

{¶ 2} In June 2023, Liccardo was named in a six-count indictment in Cuyahoga C.P. No. CR-23-682274-A, charging him with counts of aggravated murder, murder, felonious assault, and discharge of a firearm on or near prohibited premises. Each count contained one-, three-, and five-year firearm specifications. The indictment stemmed from allegations that Liccardo participated in the fatal shooting of Patrick Wilkinson (“Wilkinson”).

{¶ 3} In September 2024, Liccardo’s jury trial resulted in a mistrial. Following a retrial in August 2025, a jury found Liccardo guilty of murder, with a one-year firearm specification, and two counts of felonious assault, both with one-year firearm specifications. At sentencing, Liccardo was sentenced to an aggregate prison term of 18 years to life.

{¶ 4} In August 2025, Liccardo filed a direct appeal from his convictions and sentence. Therein, Liccardo raised five assignments of error, arguing (1) his convictions were against the manifest weight of the evidence, (2) his convictions were unsupported by sufficient evidence, (3) the trial court abused its discretion by giving the jury a complicity instruction, (4) the trial court erred by limiting the scope of trial counsel’s cross-examination of the lead detective, and (5) his sentence is

contrary to law. Upon review, this court found no merit to Liccardo's claims and affirmed the trial court's judgment. *State v. Liccardo*, 2026-Ohio-1864 (8th Dist.).

{¶ 5} In August 2026, Liccardo filed a timely application to reopen his appeal, asserting that "he was deprived of the effective assistance of appellate counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution." Specifically, Liccardo argues that appellate counsel rendered ineffective assistance of counsel by failing to raise the following proposed assignments of error:

1. Appellant was denied effective assistance of trial counsel concerning the handling and presentation of materially changed testimony from a critical prosecution witness, and appellate counsel was ineffective for failing to raise that record-based Sixth Amendment claim.
2. Appellate counsel rendered ineffective assistance by failing to raise and develop the due-process issue arising from the State's presentation, rehabilitation, and reliance upon materially conflicting testimony concerning the identity of the shooter.
3. Appellant was denied effective assistance of counsel in connection with the alternative-shooter and complicity theory, and appellate counsel was ineffective for failing to raise the distinct record-based Sixth Amendment claim.
4. The cumulative effect of appellate counsel's omissions created a reasonable probability of a different appellate result and deprived appellant of effective assistance on direct appeal.

{¶ 6} In September 2026, the State filed a brief in opposition to the application for reopening, arguing that Liccardo's proposed assignments of error do not present colorable claims of ineffective assistance of appellate counsel.

II. Law and Analysis

A. Standard of Review

{¶ 7} Under App.R. 26(B), a defendant in a criminal case may apply to reopen his or her direct appeal of the judgment of conviction and sentence based on a claim of ineffective assistance of appellate counsel. The application must be filed within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time. App.R. 26(B)(1).

{¶ 8} App.R. 26(B) establishes a two-stage procedure for adjudicating claims of ineffective assistance of appellate counsel. *State v. Leyh*, 2022-Ohio-292, ¶ 19. An applicant must first make a threshold showing that appellate counsel was ineffective. *Id.* at ¶ 19, 35. At this stage, an applicant is “not required to conclusively establish ineffective assistance of appellate counsel[.]” *Id.* at ¶ 35. Rather, “[t]he burden is on the applicant to demonstrate a ‘genuine issue’ as to whether there is a ‘colorable claim’ of ineffective assistance of appellate counsel.” *Id.* at ¶ 21, quoting *State v. Spivey*, 84 Ohio St.3d 24, 25 (1998).

{¶ 9} If the applicant makes the required threshold showing, demonstrating that “there is at least a genuine issue — that is, legitimate grounds — to support the claim that the applicant was deprived of the effective assistance of counsel on appeal,” then the application shall be granted and the appeal reopened. *Id.* at ¶ 25, citing App.R. 26(B)(5). The matter then “proceeds to the second stage of the procedure, which ‘involves filing appellate briefs and supporting materials with the assistance of new counsel, in order to establish that prejudicial errors were made

in the trial court and that ineffective assistance of appellate counsel in the prior appellate proceedings prevented these errors from being presented effectively to the court of appeals.” *Id.* at ¶ 22, quoting 1993 Staff Notes to App.R. 26(B).

{¶ 10} Claims of ineffective assistance of appellate counsel under App.R. 26(B) are subject to the two-pronged analysis enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). *See State v. Simpson*, 2020-Ohio-6719, ¶ 14, *id.* at ¶ 23 (O’Connor, C.J., concurring). In accordance with the *Strickland* analysis, an applicant must show that (1) appellate counsel’s performance was objectively unreasonable, and (2) there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Smith v. Robbins*, 528 U.S. 259, 285-286 (2000). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland* at 694.

{¶ 11} In considering Liccardo’s application, we are mindful that appellate counsel is afforded deference in determining which issues to argue on appeal. *State v. Burke*, 2002-Ohio-5310, ¶ 7. As this court has previously explained:

With respect to claims of ineffective assistance of appellate counsel, the United States Supreme Court has upheld the appellate advocate’s prerogative to decide strategy and tactics by selecting the most promising arguments and focusing on one central issue or, at most, a few key issues. *State v. Barrow*, 2015-Ohio-4579, ¶ 7 (8th Dist.), citing *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983). *See also State v. Ware*, 2014-Ohio-815, ¶ 5 (8th Dist.) (“Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal.”).

State v. Doumbas, 2016-Ohio-956, ¶ 6 (8th Dist.).

B. Proposed Assignment of Error I

{¶ 12} In the first proposed assignment of error, Liccardo argues appellate counsel was ineffective for failing to advance an assignment of error challenging trial counsel’s “handling and preservation of materially changed testimony from a critical prosecution witness.” Liccardo’s claim relies on his assertion that Benesha Allen (“Allen”), a State witness who was present at the time of the shooting, provided substantially different testimony at the original trial concerning her observations of Liccardo in the moments preceding the shooting. Specifically, Liccardo states that at the original trial, Allen testified she did not see anything in Liccardo’s hand prior to the shooting. In contrast, Allen testified at the retrial that she observed a gun in Liccardo’s left hand before she heard shots being fired.

{¶ 13} In the application for reopening, Liccardo does not dispute that trial counsel cross-examined Allen about the perceived changes in her trial testimony and that appellate counsel extensively challenged the credibility of Allen’s testimony on direct appeal. Liccardo nevertheless argues that appellate counsel was ineffective for failing to “raise the distinct Sixth Amendment question of whether trial counsel adequately developed, preserved, and litigated the constitutional significance of this material change in testimony.”

{¶ 14} After careful review of the record, we find no merit to Liccardo’s position. It is well settled that “[t]he extent and scope of cross-examination clearly fall within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel.” *State v. Leonard*, 2004-Ohio-6235, ¶ 146.

As stated, the record reflects that trial counsel thoroughly cross-examined Allen about her recollection of the shooting and forced Allen to concede that her testimony at Liccardo's original trial was "a little different" from her subsequent testimony. (Tr. 443-447.) Trial counsel relied extensively on Allen's admission throughout the remainder of the trial, arguing that her testimony lacked credibility and should be classified by the jury as "lies." (Tr. 801.) Under these circumstances, we find it would have been futile for appellate counsel to dispute the reasonableness of counsel's trial tactics, particularly where the cross-examination of Allen was comprehensive. Similarly, this court will not second-guess appellate counsel's purposeful decision to address the inconsistencies in Allen's testimony in a manifest-weight-of-the-evidence claim, as opposed to a claim of ineffective assistance of trial counsel.

{¶ 15} Based on the foregoing, we find appellate counsel was not ineffective for failing to raise a Sixth Amendment claim regarding the scope and nature of trial counsel's cross-examination of Allen. Accordingly, we find the first proposed assignment of error does not provide legitimate grounds for reopening the appeal.

C. Proposed Assignment of Error II

{¶ 16} In the second proposed assignment of error, Liccardo argues appellate counsel was ineffective for failing to question whether the State's "presentation, rehabilitation, and reliance" on Allen's "materially changed" testimony violated his constitutional right to due process. Liccardo further suggests that appellate counsel should have "developed" an argument regarding "whether the

prosecutor’s knowledge of the first-trial testimony required corrective action beyond allowing the jury to treat the discrepancy as ordinary impeachment.”

{¶ 17} Liccardo’s due-process claim relies substantially on the Supreme Court’s decision in *Napue v. Illinois*, 360 U.S. 264 (1959). In pertinent part, *Napue* long ago established that “a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.” To establish a *Napue* violation in the context of a criminal trial, a defendant must first show “that the prosecution knowingly solicited false testimony or knowingly allowed it to go uncorrected when it appeared.” (Cleaned up.) *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025). If so, then the defendant will be entitled to a new trial, “so long as the false testimony may have had an effect on the outcome of the trial—that is, if it in any reasonable likelihood could have affected the judgment of the jury.” (Cleaned up.) *Id.*

{¶ 18} After careful consideration, we are unable to conclude that Liccardo has presented a colorable claim of ineffective assistance of appellate counsel based on a perceived due process violation. The Ohio Supreme Court has recognized that “the fact that a witness changes his story is not sufficient to establish perjury.” *State v. Johnson*, 2015-Ohio-4903, ¶ 83, citing *United States v. Lebon*, 4 F.3d 1, 2 (1st Cir. 1993). In addition, “mere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony” by the prosecutor. *Id.*, quoting *United States v. Lochmondy*, 890 F.2d 817, 822 (6th Cir. 1989). Applying the foregoing, we find Liccardo cannot meet his burden under *Napue*.

The differences in Allen’s testimony at the retrial, while subject to impeachment on cross-examination, did not, standing alone, establish that the government achieved a conviction through the use of false or perjured testimony. *See State v. Renode*, 2020-Ohio-5430, ¶ 38 (8th Dist.) (“[T]he fact ‘that a witness contradicts [him or herself] or changes [his or her] story also does not establish perjury.’”), quoting *State v. Smith*, 2018-Ohio-4615, ¶ 22 (1st Dist.). Accordingly, appellate counsel was not ineffective for failing to raise this argument on direct appeal.

{¶ 19} Based on the foregoing, we find the second proposed assignment of error does not provide legitimate grounds for reopening the appeal.

D. Proposed Assignment of Error III

{¶ 20} In the third proposed assignment of error, Liccardo argues appellate counsel was ineffective for failing to advance an assignment of error regarding whether he was denied effective assistance of trial counsel in connection with the State’s complicity theory. Specifically, Liccardo contends that trial counsel failed to adequately develop and preserve the constitutional distinctions between the concepts of shared criminal intent and mere presence at the scene of the crime. He further suggests that “where the State invited the jury to convict [him] as an accomplice . . . competent representation required careful litigation of the evidence purportedly demonstrating shared criminal intent.”

{¶ 21} We find no merit to Liccardo’s position. In this case, trial counsel continuously argued at trial that the State failed to carry its burden to establish, beyond a reasonable doubt, that Liccardo was either the principal offender or

complicit in the shooting. While Liccardo takes exception with appellate counsel's failure to challenge the reasonableness of trial counsel's defense, he fails to identify a specific defect in trial counsel's strategy or what additional efforts should have been taken to challenge the State's alternative complicity theory. We decline to create arguments on Liccardo's behalf and reiterate that counsel's tactical decisions or trial strategy cannot form the basis for a claim of ineffective assistance of counsel. *State v. Foster*, 2010-Ohio-3186, ¶ 23 (8th Dist.), citing *State v. Clayton*, 62 Ohio St.2d 45 (1980).

{¶ 22} We further note that the State's alternative theory was comprehensively addressed by appellate counsel on direct appeal. As mentioned, appellate counsel challenged the trial court's decision to instruct the jury on complicity and separately argued that the State's complicity theory was not supported by sufficient or credible evidence. Appellate counsel's strategic handling of the complicity issue on appeal, including his decision to forego a claim of ineffective assistance of trial counsel, does not warrant the reopening of Liccardo's appeal. At the very most, this proposed assignment of error amounts to an attempt to relitigate issues that were previously raised and decided on direct appeal. Accordingly, we find the third proposed assignment of error does not present a colorable claim of ineffective assistance of appellate counsel.

E. Proposed Assignment of Error IV

{¶ 23} In the fourth proposed assignment of error, Liccardo argues the cumulative effect of appellate counsel's omissions created a reasonable probability

of a different appellate result and deprived Liccardo of effective assistance on direct appeal. But having found no merit to his proposed assignments of error, we summarily reject his cumulative-error argument.

{¶ 24} Application denied.

MICHAEL JOHN RYAN, JUDGE

MARY J. BOYLE, P.J., and
DEENA R. CALABRESE, J., CONCUR