

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-0818

ELLA VINSON

Appellant

On Appeal from the Franklin County Court  
: of Appeals Tenth Appellate District

vs.

: Court of Appeals Case No. 08AP-381

STATE OF Ohio

: Post Conviction Appeal 09AP-163

Appellee

: Common Pleas 07CR-6859

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT, ELLA VINSON

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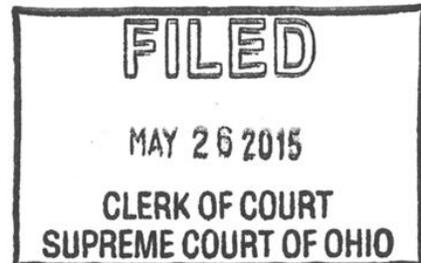


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April 8, 2015

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Memo Decision of the Franklin County Court of Appeals

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Journal Entry of the Franklin County Court of Appeals

January 6, 2014

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August 20, 2013

Journal Entry of the Franklin County Court of Appeals

August 21, 2013

Motion 14 (B), and 26(A) Filed 4/11/2013 please note a sworn statement was  
filed on 4/11/2013 entitled miscellaneous paper by the appellate clerk.

Memorandum Decision of the Franklin County Court of Appeals

12/29/2011

Journal Entry of the Franklin County Court of Appeals

12/29/2011

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Judgment Entry 8/3/2009. Motion filed by appellant on 4/14/2009 has the facially  
defective affidavit in it – Attachment G

Memorandum Decision of the Franklin County Court of Appeals

(5/7/2009)

Judgment Entry of the Franklin County Court of Appeals

(5/7/2009)

Opinion of the Franklin County Court of Appeals

(12/9/2008), (Direct appeal)

Judgment Entry of the Franklin County Court of Appeals

12/9/2008

Defendant's Renewed Crim. R. 29 Motion of Acquittal denied March 14, 2008

Defendant's Renewed Crim. R. 29 Motion of Acquittal filed March 13, 2008

EXPLANATION OF WHY THIS FELONY CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.

This case is one of public, great general interest and involves a substantial Constitutional question because as A Rule of Law a case like this is not supposed to exist nor be proven; hence the record will show *exactly how* appellant was denied substantial and procedural due process. Appellant therefore is arguing a structural or fourth amendment violation...a warrant of search or seizure shall issue only upon probable cause, supported by an oath or affirmation... R.C. 2933.22, 2933.23. It has been over seven years since appellant was convicted of felonious assault II and an Error of Law or Crim. R. 41(E) violation still exists in this case. The trial court failed to make a showing of probable cause on the record and this Crim. R. 41(E) violation (in Case No. 07-CR-6859) is recorded on the docket on 12/22/2009 when the prosecution asks permission to destroy seized property and permission was granted by the trier of fact in this case on 1/5/2010.

In addition to this Crim. R. 41(E) violation appellant has provided to the Franklin County Court of Appeals, 10th Appellate District two (2) affidavits to the search warrant associated with this case lacking an affiant and a jurat, and two search warrants lacking a signature from a neutral and detached judge; from the Columbus Police Department. The first facially defective affidavit was submitted by me to the 10<sup>th</sup> Appellate District in my post conviction appeal brief Case No. 09-AP 163, dated 4/14/2009. My brief in this case however has now been deleted from the World Wide Web and exists only for viewing at the physical location of the new courthouse located in Columbus, Ohio on Mound and High. The second facially defective affidavit

associated with this case lacking an affiant and jurat was submitted to the 10<sup>th</sup> Appellate Court on 3/20/2015 and received by me from the Columbus Police Department on 9/24/2014. Both affidavits are identical in content but the second affidavit submitted lacking an affiant and jurat has discerning marks on it verifying that it came from the Columbus Police Department. I also enclosed both of my records requests to the Columbus Police Department for this information.

Essentially the 10<sup>th</sup> Appellate District is trying to procedurally bar my structural error claim yet their position is in error. Two affidavits from the Columbus Police Department lacking an affiant and jurat, the trial courts' failure to make a showing of probable cause on the record and eight (8) other substantial errors on the record should provide more than compelling evidence that the institution of criminal proceedings against appellant for an improper purpose and without probable cause transpired. The 10<sup>th</sup> Appellate District says I failed to provide "good cause" for not filing in a timely manner yet my post conviction appeal brief of 4/14/2009 showing the affidavit to the search warrant lacking an affiant and jurat has been deleted from the World Wide Web. If I failed to provide "good cause" why tamper with the record or delete my brief for post conviction from world view? Record retention schedules apply to the actual physical documents not briefs on the internet, as my post conviction petition appeal brief is barely six years old.

Additionally appellant asserts equitable tolling should apply, *Pace v. DiGuglielmo* 544 U.S. 408 (2005). When appellant asserts she has been deprived and denied counsel along with other substantial errors not only was appellant misled but so was the 10<sup>th</sup> Appellate Court and the Ohio Supreme Court as well. Clearly appellant has been

diligent in pursuing her innocence as the numerous Memos/Journal entries from the 10<sup>th</sup> Appellate District prove, as the evidence in this case (or lack thereof) will show this case to be a complete and total fabrication.

Additionally appellant is arguing actual innocence as the affidavits to the search warrant lacking an affiant and jurat confirm. The State of Ohio participates in the Innocence Project and proof of another's DNA exonerates a wrongfully imprisoned person. So proof of innocence is the same thing as the absence of probable cause leading to a reversal of the conviction. Surely *res judicata*, true *res judicata* nor claim preclusion can not apply in a case lacking in probable cause.

Lastly, when the State seeks to bar review of a case lacking in probable cause (confirmed by a Crim. R. 41 (E) violation or reversible error) it gives the appearance of impropriety when endorsing or allowing a fundamental miscarriage of justice to stand. In *Lopez v. Trani*, 628 F.3d 1228, 1230-31 (10<sup>th</sup> Cir. 1010), the 10<sup>th</sup> Circuit held that a sufficiently supported claim of actual innocence creates an exception to procedural barrier or bringing constitutional claims. In this case appellant had to become familiar with every law in criminal practice because virtually every law in criminal procedure was broken. Appellant argues that this cause will never be moot and appellant will always seek remedy for the institution of criminal proceedings against her for an improper purpose and without probable cause (and conviction). In the decision in *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795 this court found that the Toledo Municipal Court's internal guidelines for handling complaints and warrants violated the United States and Ohio Constitutions however this case proves an even more ominous error; the willful breach of an oath of office of an elected official that knowingly allowed

illegal police conduct to proliferate into the full blown institution of criminal proceeding against appellant for an improper purpose and without probable cause.

#### STATEMENT OF THE FACTS/CASE

On 9/11/2007 at the age of 49 with no prior criminal record, appellant was at home, sitting on her porch talking on the phone when attacked from behind by an unknown and drunken stranger. In self defense appellant instinctually cut her assailant once on the forearm to get free then went in her home and called her daughter in law back then called 911. Appellant was still the first to call 911 even per the prosecution's witnesses - Tr 79, 107, 134, 164. At the time of my assault the police knew these non witnesses knowingly made false statements to them, i.e. how does the "supposed perpetrator of a crime" call 911 before the witness do? Probable cause never existed in this case and the detectives knowingly participated in the frame-up then arrested me at my home without warrant and without probable cause. For seven years now I have been diligently trying to get this wrongful conviction reversed to no avail.

The prior statements also prove appellant is innocent of felonious assault II. Appellant was at home sitting on her porch and not participating in any criminal activity or affray. So the trial court used plain error to allow non witnesses to say I pulled Aleta Straight, a drunken stranger on my porch and cut her contrary to the affidavit to the search warrant that was falsified to get a neutral and detached judge to issue a warrant to search appellant's resident when it was known probable cause did not exist against appellant in this case. This vile and egregious subornation of perjury is why the affidavit to the search warrant lacks an affiant and jurat and the trial court failed to make a showing of probable cause on the record. Every component of this structural error is

corroborated by the record and will be revealed in the propositions of law.

#### PROPOSITION OF LAW No. 1

The trial court knowingly and illegally prosecuted appellant for an improper purpose and without probable cause.

Manifest Constitutional Error transpired when the trier of fact knowingly failed to make a showing of probable cause on the record - Crim. R. 41 (E) violation. This abuse of discretion is supported by a facially defective affidavit to the search warrant lacking an affiant and jurat in violation of R.C. 2933.22. When the trier of fact knowingly makes an error of law or Crim. R. 41 (E) violation in order to hide the fact that appellant was prosecuted without probable cause, substantial due process was denied appellant. Tr. 3 shows appellant's seized knife was used in State evidence at trial and this seized property was destroyed per the record – docketed on 12/22/09 and 1/5/2010. This fundamental violation is an infringement of my Fourth Amendment Constitutional rights as cited in Beck v. State of Ohio, 379 U.S. 89, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964).

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. In Neder v. United States (1999), 527 U.S. 1, the U.S. Supreme Court has stated that structural errors are of such great magnitude that they are not subject to the harmless error analysis and automatic reversal is required.

#### PROPOSITION OF LAW No. 2

Constitutional error transpired when the record shows appellant was deprived of counsel at the onset of this case.

The trial court docket shows appellant was deprived of counsel at arraignment on 10/3/2007. My plea of not guilty shows appellant did not have the assistance of counsel at arraignment but was accompanied to arraignment by someone who was for "arraignment purposes only" with no State ID in violation of Crim. R 44(A) and Crim. R. 2(C). The U.S. Supreme Court stated in *Coleman v. Alabama* 399 U.S.1, 90 S. Ct. 1999; 26 L. Ed. 2d 387 (1970) U.S. Lexis 17, Headnote 17 that the right to counsel is required at arraignment. This violation of my 6<sup>th</sup> Amendment U.S. Constitutional right to counsel greatly prejudiced my case. Additionally this counsel was terminated or withdrew one week later on 10/10/2007. Since appellant did not have counsel working in my defense at the onset of this case the bogus affidavit to the search warrant went unchallenged. The affidavit to the search warrant located in Municipal Court is faulty as it was clerked in or time stamped 9/17/2007 while the search warrant was signed by Judge Herbert on 9/11/2007. How is it possible for a neutral judge to give permission for a search on 9/11/2007 when the request for a search was not filed or clerked in until 9/17/2007? Additionally a complaint or arrest warrant for my arrest was made on 9/11/2007 at 11:12 pm prior to the signing of the warrant to search at 11:35 pm. Without counsel to challenge the validity of my arrest or the search warrant in the Franklin County Municipal Court substantial due process and judicial checks and balances were denied appellant in this case. Hence the good faith exception to the exclusionary rule does not apply when official police documentation was falsified to get a neutral and detached judge to issue a warrant to search my residence when probable

did not exist. US v. Leon, 468 US 897, 104 S. Ct. 3405, 82 L.Ed 2d 677 (1984). Yet appellant's ill-obtained property was used in the State's case at trial anyway-due to lack of counsel and lack of judicial checks and balances. Lastly the bare bones affidavit to the search warrant does not state how the officer knows or why he believes that appellant committed a crime, State v. Hoffman supra. The affidavit states Aleta Straight/McKinnon told the police officer the stabbing occurred in front of my residence yet Aleta was not at home-appellant was, appellant did not trespass on Aleta Straight's porch and assault her-Aleta Straight trespassed onto my porch and assaulted me; the police officer even testified she said she was up there (Tr 133). Aleta Straight was intoxicated not appellant and even unable to identify me-see her audio recording taken at the time of the incident. These illegalities coupled with falsification of the affidavit to the search warrant proves appellant was denied equal protection of the law a 5<sup>th</sup> Amendment violation hence prejudice is presumed.

### PROPOSITION OF LAW No. 3

The trier of fact knowingly committed prejudicial error when convicting appellant with insufficient evidence to support the verdict of guilty in this felonious assault II conviction.

Tr. 3 shows the evidence used by the State to support this conviction consists of four (4) photos and appellant's ill-obtained knife. This evidentiary error proves the State's prima facie case lacked merit and sufficiency of the evidence was the real issue in this case. This 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment violation proves this trier of fact was not on a fact finding mission as cited in In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed 2d 368 (1970). This Court stated that the Constitution prohibits the conviction of any person

except upon proof of guilt beyond a reasonable doubt. Four photos and appellant's ill obtained property does not meet this requirement proving appellants' case was prejudiced and that the trier of fact was not on a fact-finding mission and clearly lost his way because this evidence does not support the verdict of guilty. I personally am appalled by this judge's lack of integrity when adjudicating this case as this evidentiary error or insufficient evidence should offend a sense of justice.

#### PROPOSITION OF LAW No. 4

The prosecution knowingly violated Brady and deprived appellant of a fair trial. On the trial court's docket 12/15/08 a subpoena for the medical records was requested and received on 9/11/2007 by the prosecutor and judge in this bench trial. Yet the medical records were not introduced into evidence to prove the State's case because it was favorable to the defense and the State did not have a case. How can the State fail to turn in medical evidence in a felonious assault case? This proposition of law shows appellant was deprived of her 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment, U.S. Constitutional rights as excluded evidence favorable and material to the defense was withheld by the prosecution. Hence the Court added little to the trial's truth finding function and in *United States v. Agurs*, 427 U.S. 97, 104, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976) it states "implicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial - surely all evidence is not neutral.

#### PROPOSITION OF LAW No. 5

The record shows appellant was deprived of the assistance of counsel as guaranteed by the 5<sup>th</sup> Amendment of the US Constitution

Tr. 3 shows the evidence introduced in this case by the defense consists of seven (7)

photographs. This evidence does not meet the air of reality requirement necessary to have an affirmative defense of self defense. This negligible evidence introduced at trial by defense counsel proves that appellant did not receive the assistance of counsel and defense counsel failed to act in appellant's behalf in any meaningful way hence denial of a fair trial or prejudice is presumed - a 6<sup>th</sup> Amendment violation. Then defense counsel stated on the record, Tr 244 - "We've gotten along very well, but, you know, she made a couple of statements that she wishes that there was some evidence that I would have subpoenaed or put in the record or things like that (sic)." Hence res judicata can not apply when appellant was denied counsel [Gideon v. Wainwright, 372 U. S. 335 (1963)] and a conflict of interest exists as cited in Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708, 64 L.Ed.2d 333 (1980).

#### PROPOSITION OF LAW No. 6

The plain error on the record was strategically employed by the trial court to deny appellant her 6<sup>th</sup> Amendment Constitutional Guarantee of an opportunity for effective cross examination of the "witnesses", and to allow subornation of perjury

On the docket November 20, 2007 both the prosecution and defense signed the Criminal Pre-Trial Statement (enclosed) declaring that Discovery will be completed by trial (enclosed). Yet Tr 31-35, 130 shows the defense motioning the court in accordance with Crim. R. 16(B)(1)(g), asking to listen to the "witnesses" prior statements for the first time since discovery had not been provided. On Tr 32 lines 14 and 15, the prosecutor Laurie Arsenault stated "I do not have -- there aren't written statements by the witnesses." This is the plain error on the record and means that the prosecution failed to provide the written prior statements to the defense to have for use during cross-examination of the witnesses (since discovery was not provided prior to trial and he had never heard the

prior statements before). Herein lies the deception of prosecution without probable cause, pretend as if the rules are being followed then violate appellant's right to confront adverse "witnesses;" in violation of the Confrontation Clause or appellant's 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> U.S. Constitutional *guarantee* of the opportunity for effective cross examination. In Davis v. Alaska, 415 U.S. 308; 94 S. Ct. 1105; 39 L. Ed. 2d 347; 1974 U.S. LEXIS 104 this court stated, "Denial of the right to effective cross-examination is Constitutional error of the first magnitude of which no amount of showing or want of prejudice can cure."

Exclusion of evidence for use during cross-examination of the witnesses is plain error - Crim. R. 52(B) and clearly appellant was denied her Constitutional right via a guarantee to confront adverse witnesses, present a defense or impeach perjured testimony proving the adversarial process did not exist in this case. The purpose of this plain error by the trial court was to allow subornation of perjury by the prosecution and all the "witnesses" testified at trial that I pulled Aleta Straight on my porch and cut - Tr 18, 45, 58, 65, 88, 89, 93, 103, 124; even employing a Columbus Police Officer to lie in their behalf contrary to his police report. Note that this material testimony of falsity went uncontested by defense counsel yet this testimony was not verbalized on any of the prior statements (enclosed here on audio), and is contrary to the facially defective affidavits to the search warrant from the Columbus Police Dept. and the suppressed Court Arraignment sheet. The court in Agurs, supra, at 103 stated that the prosecution's known use of perjured testimony and a conviction obtained by the known usage of perjured testimony is fundamentally unfair and the verdict must be set aside if the likelihood that the false testimony affected the judgment. This vile and egregious subornation of perjury was claimed to have been believed by the trier of fact in this case - Tr 213, 217. The fact that a plain error exists on

the record allowing subornation of perjury proves appellant acted only in self defense.

Please note that on Tr 33 the trier of fact, mocking the law asks the witness on the stand Aleta Straight, did she have the prior statements written out. "What were you telling me about? What was the statement, did you write something? On this same page the trier of fact tells defense counsel, "Well, what do you want to do about listening to the audiotape or have me listen to it? I don't have any equipment to do that;" clearly in defiance of Crim. R. 16(B)(1)(g). These words spoken on the record by this trier of fact shows complicity with this plain error and has seriously affected the fairness, integrity and public reputation of this judicial proceeding. When this trier of fact pretends as if he has not heard the prior statements then fails to listen to them when motioned to do so by the defense, this is the same thing as acknowledging that the search warrant and affidavit is faulty and that he knew probable cause did not exist in this case.

This court did not commit plain error to tell the truth, plain error is committed to hide the truth and allow subornation of perjury which is contrary to the truth seeking function of a trial and the administration of justice. So in open defiance of the law, appellant's case was knowingly prejudiced by this plain error and perjured testimony that was claimed to have been believed by the trier of fact - Tr 213, 217. Impeachment evidence as well as exculpatory evidence falls within the Brady rule and don't forget it was this trier of fact that failed to make a showing of probable cause on the record [Crim. R. 41(E) violation].

Lastly on this issue per Tr 32 lines 23 and 24, Ms Arsenault stated during trial that "she haven't had opportunity to copy them (the audio taped prior statements). I just have the one set." Ergo defense counsel left the courtroom that day without the prior statements in writing or on audio - confirmed by the attached E-mail from attorney Schumann to me.

Failing to disseminate or withholding the prior statements from defense counsel in violation of Crim. R. 16(B) (1)(g) is the same thing as saying that the court knew the “witnesses” were lying at the time of the incident and probable cause never existed. Hence appellate counsel could not have performed a bonafide appeal because she also never received the prior statements to perform a bonafide appeal with. For brevity’s sake Collusion of appellate counsel was discussed in my motion filed on 3/20/2015 hence Proposition of law No. 8 will not be discussed in this motion

Another material testimony of falsity used by this trial court because there was no affray or witnesses was that “Brenda followed Aleta to appellant’s house.” - Tr 112, 115, 118, 119. My assailant or the so called victim Aleta Straight testified “she walked back to where Debbie and Susie and Brenda were” after leaving my porch -Tr.28. I testified only Susie was looking, Brenda and Debbie were gone - Tr 159. Susie Walden was a quasi witness from afar and an accomplice - she seen Aleta jump me on my porch without provocation but she didn’t see me cut Aleta because Aleta was all over me (see Susie Walden’s 911 call). Since it was known there were no witnesses to the actual incident the prosecution has now suborned these people to change Brenda’s whereabouts at the time of the incident to make it seem like Brenda was closer to the incident and a witness. Please note that during Brenda’s direct examination (Tr. 112,115), the trier of fact is in the trenches leading the witness, aiding and abetting perjured testimony by stating, “Brenda followed Aleta to appellant’s house,” more than Brenda did; Brenda just concurred yet this is contrary Brenda’s audio taped statement at the time of the incident (enclosed), and my and Aleta Straight’s testimony at trial - Tr. 28, 159.

Other instance of material testimony of falsity was that I was calling the kids names,

yet Aleta Straight said on audio (enclosed) at the time of the incident that her grandkids were further down and did not see anything, as no children were around nor have I ever called anyone's child a name. Aleta Straight testified that she was "in shock" - Tr 24, 28, 39 but on audio at the time of the incident she stated she was "fucking socked." This was her reason for attacking me at my home without provocation, she told the detectives this on audio at the time of the incident that she attacked me or this incident happened because "she had been drinking;" this statement alone should have closed this case before it began. Plain error is grievous and a reversible error in and of itself

#### PROPOSITION OF LAW No. 7

Appellant's right to be heard was violated by the trial court (includes faulty certification by the court reporter) in efforts to hide the existence of this structural error.

In violation of my 5<sup>th</sup> and 14<sup>th</sup> Amendment rights of self incrimination and due process appellant's right to be heard was violated. I have enclosed just a few examples here, a more extensive listing was enclosed in my motion to the 10<sup>th</sup> District Appellate Court on 3/20/2015 in Case No 08-AP-381

Tr 11-12 "my attorney" George Schumann's opening statement

And when she realized that the person that was coming up on the porch was intoxicated, she was determined that she would go into her apartment. She turned her back to the person, who was intoxicated at this point, and initiated the physical assault.

What my attorney said was "She turned her back to the person who was intoxicated and that is when Aleta Straight initiated the physical assault.

Tr. 129 - 130

When the police officer that testified said I told him "I was the victim it was deleted from the record."

Yes she was talking in circles, but she kept saying --- (insert I was the victim here)

Tr 151, lines 6-9 The question was what happened not How would you describe that?

I said it was crazy...yet they have me on the record saying I said I was crazy.

Tr 168, lines 13 -14

I did not realize that she was a lady until I was turning around to go into my house, but what

I said was "I did not realize she was dangerous until I turned around to go into my house."  
(this is when I was jumped from behind)

#### PROPOSITION OF LAW No. 8

The trial court abused its discretion when showing bias/malice against appellant

In violation of my 6<sup>th</sup> Amendment U.S. Constitutional right to an impartial jury, I have enclosed just a few examples here, a more extensive listing was enclosed in my motion to the 10<sup>th</sup> District Appellate Court on 3/20/2015 in Case No 08-AP-381

Tr 42 I understand. I just don't want to make this into a trial about her and whether she drinks too much other than the day in question. Yet she stated she was fucking socked on audio and the medical evidence suppressed from the record, confirmed her intoxication on the day in question

Tr 50 That is what I was wondering, whether your tolerance was high - these words spoken immediately after Aleta Straight testified "she drinks all the time."

Tr 190 I will try not to get to get any of us poked with a knife in here.

Tr 210 Well 15 stitches, and I thought ... Note the medical evidence is not of record so

this trier of fact magnified Aleta Straight's injuries three-fold on the record (regarding stitches) to make it seem like or pretend there was an affray (vile).

Tr 219 ...because two elements of self-defense have not been proven, the defense is not available to negate the proof of the state's case...yet the State never had a prima facie case. Note this judge said "not available" instead of not able.

Tr 237 I don't want any suggestion here that you're going to find these people and retaliate or hang dead cats in their windows (sic). (to make it seem like I am the bad person)

Tr 240 "Having said that you are on a very short leash with me"

### PROPOSITION OF LAW No. 9

Appellate counsel was in collusion with the prosecution of appellant without probable cause see motion for this appeal-misfeasance for brevity default to 3/20/2015 motion

### PROPOSITION OF LAW No. 10

Appellate Court barring my 26(A) and (14(B) motion and briefly other discretions  
Opinion 12/8/2008 ¶ 3, Straight stated on audio her grandchildren were not around  
Opinion 12/8/2008 ¶ 4, none of non witnesses stated on audio at time of incident I grabbed her arm. Opinion 12/8/2008 ¶ 6 Medical report suppressed said she was intoxicated. Opinion 12/8/2008 ¶ 7 Walden called 911 but she testified Tr 79, and that's when I called the police, but evidently, the defendant had already called when I called 911. Opinion 12/8/2008 ¶ 12, on audio at time of incident Brenda stated Aleta came over to where I was sitting. Opinion 12/8/2008 ¶ 20 Appellant said this lady came onto my porch. Appellate Court is regurgitating lies promulgated by the trial court. Can't someone listen to the prior statements as plain error is proven in Proposition No.6.

Therefore based on the aforementioned issues, appellant is asking this Court to hear my claims based on good cause shown or remand this case back to the lower Court with instructions on how to entertain the merits of the issues presented.

Respectfully submitted,

*Ella Vanson*  
Pro se

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

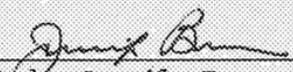
State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. :  
 :  
 Ella B. Vinson, :  
 :  
 Defendant-Appellant. :

No. 08AP-381

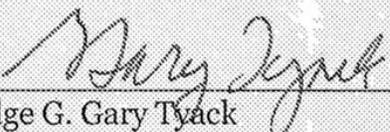
(REGULAR CALENDAR)

JOURNAL ENTRY

Appellant not providing good cause explaining her failure to file an application for reconsideration in a timely fashion, appellant's March 20, 2015 motions for leave to a file delayed motion for reconsideration and for reconsideration are denied.

  
\_\_\_\_\_  
Judge Jennifer Brunner

  
\_\_\_\_\_  
Judge Julia L. Dorrian

  
\_\_\_\_\_  
Judge G. Gary Tyack

*Duo*

Court Disposition

Case Number: 08AP000381

Case Style: STATE OF OHIO -VS- ELLA B VINSON

Motion Tie Off Information:

1. Motion CMS Document Id: 08AP0003812 [REDACTED] 950000  
Document Title: 03-20-2015-MOTION TO RECONSIDER  
Disposition: 3200
2. Motion CMS Document Id: 08AP0003812 [REDACTED] 960000  
Document Title: 03-20-2015-MOTION FOR LEAVE TO FILE  
Disposition: 3200

Court Disposition

Case Number: 08AP000381

Case Style: STATE OF OHIO -VS- ELLA B VINSON

Motion Tie Off Information:

1. Motion CMS Document Id: 08AP0003812 [REDACTED] 960000  
Document Title: 04-30-2014-MOTION TO RECONSIDER  
Disposition: 3200
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Disposition: 3200

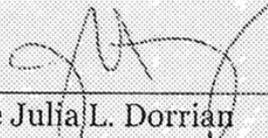
IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

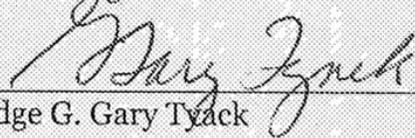
State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 08AP-381
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY  
NUNC PRO TUNC

Appellant not providing good cause explaining her failure to timely file an application for reconsideration, appellant's April 30, 2014 motion for leave to file an application for reconsideration due to extraordinary circumstances and application for reconsideration are denied.

  
\_\_\_\_\_  
Judge Amy C. O'Grady

  
\_\_\_\_\_  
Judge Julia L. Dorrian

  
\_\_\_\_\_  
Judge G. Gary Tyack

cc: Clerk, Court of Appeals



Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jun 10 2:05 PM-08AP000381

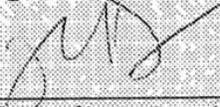
IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

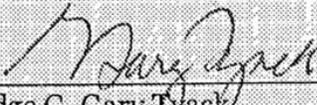
State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 08AP-381
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY

Appellant not providing good cause explaining her failure to timely file an application for reconsideration, appellant's April 3, 2014 motion for leave to file an application for reconsideration and application for reconsideration are denied.

  
 \_\_\_\_\_  
 Judge Amy C. O'Grady

  
 \_\_\_\_\_  
 Judge Julia L. Dorrian

  
 \_\_\_\_\_  
 Judge G. Gary Tyack

cc: Clerk, Court of Appeals

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 May 07 3:06 PM-08AP000381

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :

Plaintiff-Appellee, :

v. :

No. 08AP-381

Ella B. Vinson, :

(REGULAR CALENDAR)

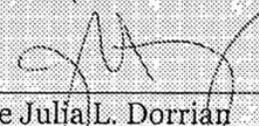
Defendant-Appellant. :

JOURNAL ENTRY  
NUNC PRO TUNC

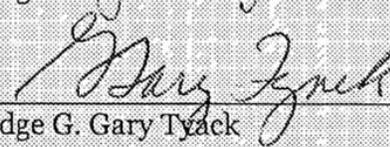
Appellant not providing good cause explaining her failure to timely file an application for reconsideration, appellant's April 30, 2014 motion for leave to file an application for reconsideration due to extraordinary circumstances and application for reconsideration are denied.



\_\_\_\_\_  
Judge Amy C. O'Grady

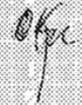


\_\_\_\_\_  
Judge Julia L. Dorrian



\_\_\_\_\_  
Judge G. Gary Tyack

cc: Clerk, Court of Appeals



Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jun 10 2:05 PM-08AP000381

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

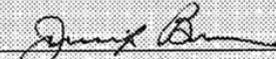
State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
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 v. :  
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 Ella B. Vinson, :  
 :  
 Defendant-Appellant. :

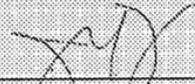
No. 08AP-381

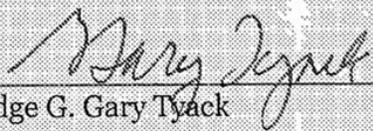
(REGULAR CALENDAR)

JOURNAL ENTRY

Appellant not providing good cause explaining her failure to file an application for reconsideration in a timely fashion, appellant's March 20, 2015 motions for leave to a file delayed motion for reconsideration and for reconsideration are denied.

  
\_\_\_\_\_  
Judge Jennifer Brunner

  
\_\_\_\_\_  
Judge Julia L. Dorrian

  
\_\_\_\_\_  
Judge G. Gary Tyack

*Duc*

Court Disposition

Case Number: 08AP000381

Case Style: STATE OF OHIO -VS- ELLA B VINSON

Motion Tie Off Information:

1. Motion CMS Document Id: 08AP0003812 [REDACTED] 950000  
Document Title: 03-20-2015-MOTION TO RECONSIDER  
Disposition: 3200
2. Motion CMS Document Id: 08AP0003812 [REDACTED] 960000  
Document Title: 03-20-2015-MOTION FOR LEAVE TO FILE  
Disposition: 3200

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 08AP-381
	:	(C.P.C. No. 07CR-6859)
v.	:	
	:	(REGULAR CALENDAR)
Ella B. Vinson,	:	
	:	
Defendant-Appellant.	:	

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MEMORANDUM DECISION

Rendered on December 30, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

*Ella B. Vinson*, pro se.

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ON APPLICATION FOR REOPENING

O'GRADY, J.

{¶ 1} Defendant-appellant, Ella B. Vinson, filed an application, pursuant to App.R. 26(B), seeking to reopen her appeal decided in *State v. Vinson*, 10th Dist. No. 08AP-381, 2008-Ohio-6430. Plaintiff-appellee, State of Ohio, filed a memorandum in opposition to appellant's application. For the reasons that follow, we deny appellant's application for reopening.

{¶ 2} On September 20, 2007, appellant was indicted on one count of felonious assault, in violation of R.C. 2903.11. Following a bench trial, the trial court sentenced appellant to three years of community control.

{¶ 3} In her direct appeal, appellant alleged certain errors, including ineffective assistance of trial counsel. Appellant's arguments were rejected by this court and, on December 9, 2008, her conviction was affirmed.

{¶ 4} Initially, we note that App.R. 26(B)(1) requires an application for reopening to be filed "within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time." Also, App.R. 26(B)(2)(b) requires that an application for reopening include "[a] showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment."

{¶ 5} This is appellant's third application to reopen. *See State v. Vinson*, 10th Dist. No. 08AP-381 (May 7, 2009) (memorandum decision), and *State v. Vinson*, 10th Dist. No. 08AP-381 (Dec. 29, 2011) (memorandum decision). Appellant's current application is untimely and she has not provided good cause for why she did not timely file. Moreover, "App.R. 26(B) makes no provision for filing successive applications to reopen." *State v. Peeples*, 73 Ohio St.3d 149, 150 (1995).

{¶ 6} For these reasons, appellant has failed to comply with the mandatory filing requirements set forth in App.R. 26(B)(1) and (2)(b). Accordingly, this court need not address the merits of appellant's third application and we deny her application for reopening.

*Application for reopening denied.*

TYACK and DORRIAN, JJ., concur.

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Tenth District Court of Appeals

**Date:** 01-06-2014  
**Case Title:** STATE OF OHIO -VS- ELLA B VINSON  
**Case Number:** 08AP000381  
**Type:** JOURNAL ENTRY

So Ordered

*Amy C. O'Grady*  *Amy C. O'Grady*

/s/ Amy C. O'Grady

Court Disposition

Case Number: 08AP000381

Case Style: STATE OF OHIO -VS- ELLA B VINSON

Motion Tie Off Information:

1. Motion CMS Document Id: 08AP0003812 [REDACTED] 980000  
Document Title: 12-09-2013-APPLICATION TO REOPEN  
Disposition: 3200

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 08AP-381
	:	(C.P.C. No. 07CR-6859)
v.	:	
	:	(REGULAR CALENDAR)
Ella B. Vinson,	:	
	:	
Defendant-Appellant.	:	

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M E M O R A N D U M D E C I S I O N

Rendered on August 20, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

*Ella B. Vinson*, pro se.

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ON MOTION FOR LEAVE TO FILE  
DELAYED MOTION FOR RECONSIDERATION

O'GRADY, J.

{¶ 1} Defendant-appellant, Ella B. Vinson, seeks leave to file a delayed motion for reconsideration pursuant to App.R. 14(B) and 26(A)(1) from our decision in *State v. Vinson*, 10th Dist. No. 08AP-381, 2008-Ohio-6430 ("*Vinson I*"), which affirmed appellant's conviction and sentence for felonious assault. For the following reasons, we deny the motion.

{¶ 2} On September 20, 2007, appellant was indicted on one count of felonious assault. On February 29, 2008, following a bench trial, the Franklin County Court of Common Pleas found appellant guilty of this charge. See *State v. Vinson*, 10th Dist. No. 09AP-163, 2009-Ohio-3751, ¶ 2. The trial court sentenced appellant to three years of community control. Appellant timely appealed the judgment of conviction and sentence,

arguing in part that her trial counsel was ineffective. On December 9, 2008, we rejected her claims and affirmed the judgment. *Vinson I*, appeal not allowed, 121 Ohio St.3d 1453, 2009-Ohio-1820.

{¶ 3} Over four years after our decision was rendered, on April 11, 2013, appellant filed a motion pursuant to App.R. 14(B) and 26(A) for leave to file a delayed motion for reconsideration of our decision in her direct appeal. Therein, she claimed that she received ineffective assistance of her appellate counsel. Appellant also indicated that she was delayed in filing her motion because in December 2009 she received new evidence that the state did not give her trial counsel copies of statements of certain witnesses who testified at trial.

{¶ 4} Appellant's motion lacks merit. First, appellant's reliance on App.R. 26(A) is misplaced. App.R. 26(B), not 26(A), governs the procedure to reopen an appeal from a judgment of conviction and sentence based upon a claim of ineffective assistance of appellate counsel. *See State v. Dingess*, 10th Dist. No. 10AP-848, 2013-Ohio-801, ¶ 4; *State v. Davis*, 4th Dist. No. 09CA19, 2009-Ohio-7083, ¶ 14 ("App.R. 26(B) permits the courts of appeal to consider ineffective assistance of appellate counsel claims by motion filed ninety days after journalization of the judgment of the appellate court.").

{¶ 5} Second, appellant was required to file her motion within 90 days from the journalization of our December 9, 2008 decision. *See* App.R. 26(B)(1) ("An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time."). Here, appellant's motion was filed on April 11, 2013, more than four years after our decision. Nor does she show good cause to delay filing the motion significantly more than 90 days past the discovery of the evidence she relies on in her motion.

{¶ 6} Third, a motion for reopening is required to contain "[a] sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised \* \* \* and the manner in which the deficiency prejudicially affected the outcome of the appeal." App.R. 26(B)(2)(d). Appellant's motion does not contain this sworn statement, which supports a basis for denial of her motion. *See Dingess* at ¶ 12, citing *State v. Lechner*, 72 Ohio St.3d 374 (1995) ("Such a statement

is mandatory, and the failure to comply with this requirement warrants denial of an application to reopen."); *see also State v. Thompson*, 10th Dist. No. 97APA04-489 (Mar. 24, 1998).

{¶ 7} Finally, even if we consider appellant's motion for reconsideration as one properly filed under App.R. 26(A), she has not established the "extraordinary circumstances" required by App.R. 14(B) to support the lengthy delay between the time she discovered the new evidence in December 2009, until she filed her April 11, 2013 motion for leave to file delayed motion for reconsideration.

{¶ 8} For the foregoing reasons, we deny appellant's motion for leave to file a delayed motion for reconsideration. Having denied appellant's motion for leave to file delayed motion for reconsideration, appellant's motion for reconsideration is rendered moot.

*Motion for leave to file delayed  
motion for reconsideration denied;  
motion for reconsideration rendered moot.*

TYACK and DORRIAN, JJ., concur.

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Tenth District Court of Appeals

**Date:** 08-21-2013  
**Case Title:** STATE OF OHIO -VS- ELLA B VINSON  
**Case Number:** 08AP000381  
**Type:** JOURNAL ENTRY

So Ordered

*Amy C. O'Grady*  *Amy C. O'Grady*

/s/ Amy C. O'Grady

Court Disposition

Case Number: 08AP000381

Case Style: STATE OF OHIO -VS- ELLA B VINSON

Motion Tie Off Information:

1. Motion CMS Document Id: 08AP0003812 [REDACTED] 970000  
Document Title: 04-11-2013-MOTION TO RECONSIDER  
Disposition: 3204
2. Motion CMS Document Id: 08AP0003812 [REDACTED] 980000  
Document Title: 04-11-2013-MOTION FOR LEAVE TO FILE  
Disposition: 3200

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IN THE COURT OF APPEALS OF OHIO

EILED  
COURT OF APPEALS  
COLUMBIA CO OHIO

TENTH APPELLATE DISTRICT

2011 DEC 29 PM 12:31

CLERK OF COURTS

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-381
v.	:	(C P C No 07CR09-6859)
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on December 29, 2011

*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*,  
for appellee.

*Ella B. Vinson*, pro se.

ON APPLICATION FOR REOPENING

FRENCH, J.

{¶1} Defendant-appellant, Ella B. Vinson ("appellant"), has filed an App.R. 26(B) application to reopen her direct appeal in *State v. Vinson*, 10th Dist. No. 08AP-381, 2008-Ohio-6430. Plaintiff-appellee, the state of Ohio, opposes the application, and we deny it for the following reasons.

{¶2} An application to reopen is due 90 days from journalization of the appellate judgment. App.R. 26(B)(1). This court journalized the judgment in *Vinson* on December 9, 2008. Therefore, appellant's application was due on March 9, 2009, but she did not file it until October 12, 2011. Appellant's application is untimely, and she must show good cause for the untimeliness in order for us to review it. See App.R. 26(B)(1). Appellant says that she has been investigating her case, but she fails to explain why she could not have completed her investigation in time to meet the deadline in App.R. 26(B)(1). Consequently, appellant does not establish good cause for her failure to file a timely application for reopening.

{¶3} In any event, appellant previously filed an application to reopen her direct appeal. See *State v. Vinson* (May 7, 2009), 10th Dist. No. 08AP-381 (memorandum decision). Accordingly, we need not entertain her second application because App.R. 26(B) has no provision for successive applications. See *State v. Peeples*, 73 Ohio St.3d 149, 150, 1995-Ohio-36; *State v. Coeey*, 99 Ohio St.3d 345, 2003-Ohio-3914, ¶5. For all these reasons, we deny appellant's App.R. 26(B) application for reopening.

*Application for reopening denied.*

TYACK and DORRIAN, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
10TH DISTRICT  
2011 DEC 29 PM 12:45  
CLERK OF COURTS

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-381
v.	:	(C.P.C. No 07CR09-6859)
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on December 29, 2011, it is the order of this court that appellant's application for reopening is denied.

FRENCH, TYACK, and DORRIAN, JJ.

By Judith French  
Judge Judith L. French

Inje 10v

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,

Plaintiff-Appellee,

v.

Ella B. Vinson,

Defendant-Appellant.

No. 09AP-163  
(C.P.C. No. 07CR-09-6859)

(REGULAR CALENDAR)

FILED  
CLERK OF COURTS  
2009 JUL 30 PM 12:55  
FRANKLIN CO OHIO

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D E C I S I O N

Rendered on July 30, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*, for appellee.

*Ella B. Vinson*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Ella B. Vinson, from a judgment of the Franklin County Court of Common Pleas, denying appellant's petition to vacate or set aside a judgment of conviction.

{¶2} On September 20, 2007, appellant was indicted on one count of felonious assault, in violation of R.C. 2903.11. Appellant waived her right to a jury trial, and the

case was tried to the bench. On February 29, 2008, the trial court found appellant guilty of the charge of felonious assault.

{¶3} Represented by new counsel, appellant appealed the judgment, arguing that her conviction was against the manifest weight of the evidence, and that she received ineffective assistance of counsel.<sup>1</sup> In *State v. Vinson*, 10th Dist. No. 08AP-381, 2008-Ohio-6430, this court overruled appellant's assignments of error and affirmed the judgment of the trial court.

{¶4} On December 15, 2008, appellant filed a petition, pursuant to R.C. 2953.21, to vacate or set aside her judgment of conviction or sentence. The trial court denied appellant's petition by entry filed January 16, 2009.

{¶5} On appeal, appellant sets forth the following assignment of error for this court's review:

The "trier of fact" violated Ella Vinson's rights to *due process and a fair trial*, the "trier of fact was *not impartial* and the "trier of fact willfully and knowing allowed known perjured testimony to influence his decision in this case.

(Sic passim.)

{¶6} Appellant's pro se brief raises five "claims" under her single assignment of error. Specifically, appellant argues: (1) the trial court made "deceitful statements" regarding the number of 911 calls that were to be entered into evidence; (2) the trial court allowed witnesses to commit perjury; (3) the trial court engaged in "promulgating falsehoods" as to the number of stitches the victim received; (4) evidence regarding blood

---

<sup>1</sup> At trial, appellant was represented by an assistant county public defender. Following her conviction, the trial court appointed private counsel to represent appellant on appeal.

drops on appellant's porch was withheld; and (5) "[i]t is conceivable that my transcript testimony would be change[d]."

{¶7} Post-conviction relief is governed by R.C. 2953.21, which provides in part:

(A)(1)(a) Any person who has been convicted of a criminal offense \* \* \* and who claims 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 \* \* \* may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

{¶8} The Supreme Court of Ohio has noted that "a petition for postconviction relief 'is not an appeal of a criminal conviction but, rather, a collateral civil attack on the judgment' \* \* \* in which a claimant asserts that either actual innocence or deprivation of constitutional rights renders the judgment void." *State v. Silsby*, 119 Ohio St.3d 370, 2008-Ohio-3834, ¶16, quoting *State v. Calhoun*, 86 Ohio St.3d 279, 281, 1999-Ohio-102. A criminal defendant seeking to challenge his or her conviction through a petition for post-conviction relief is not automatically entitled to a hearing. *State v. Cole* (1982), 2 Ohio St.3d 112, 113. Prior to granting a hearing, "the court shall determine whether there are substantial grounds for relief." R.C. 2953.21(C). Pursuant to the provisions of R.C. 2953.21(C), "a trial court properly denies a defendant's petition for postconviction relief without holding an evidentiary hearing where the petition, the supporting affidavits, the documentary evidence, the files, and the records do not demonstrate that petitioner set forth sufficient operative facts to establish substantive grounds for relief." *Calhoun*, paragraph two of the syllabus. An appellate court reviews a trial court's decision to deny

a post-conviction petition without a hearing under the abuse of discretion standard. *State v. Banks*, 10th Dist. No. 08AP-722, 2009-Ohio-1667, ¶10.

{¶9} Res judicata is a proper basis upon which to dismiss, without a hearing, an R.C. 2953.21 petition. *Id.* at ¶9. A petition for post-conviction relief may be dismissed without a hearing, based upon the doctrine of res judicata, if the trial court finds that the petitioner could have raised the issues in the petition at trial or on direct appeal without resorting to evidence beyond the scope of the record. *State v. Scudder* (1998), 131 Ohio App.3d 470, 475.

{¶10} Under appellant's first "claim," she argues that the trial court made "deceitful statements" at trial regarding the number of 911 calls placed at the time of the incident. By way of background, during the testimony of the state's first witness, defense counsel made a request with the trial court to review a witness statement. At that time, the prosecutor discussed other witness statements, as well as 911 calls. The trial court then engaged in the following colloquy with the prosecutor and defense counsel regarding 911 records:

THE COURT: Were there two 911 calls, I have the impression?

[DEFENSE COUNSEL]: Yes, sir.

[PROSECUTOR]: Correct.

THE COURT: Are those going to be entered in to evidence, both of them, one of them, none of them? What's the plan on that?

[PROSECUTOR]: It was not my intention.

[DEFENSE COUNSEL]: I wasn't planning on it, Your Honor.

THE COURT: All right.

[PROSECUTOR]: So there's -

THE COURT: Two or three.

[PROSECUTOR]: - two or three.

(Tr. 34.)

{¶11} Appellant contends that the trial court's reference to "[t]wo or three" 911 calls (as opposed to two 911 calls) was a "deceitful" statement, apparently made to "get one to believe that there were witnesses." (Appellant's brief, at 4.) Appellant also argues that her phone records should have been introduced at trial.

{¶12} In addressing the merits of appellant's post-conviction claim regarding these records, the trial court noted that "telephone records and witness statements \* \* \* were available at trial," and the court held that "[a]ny complaints as to whether this evidence was excluded at trial after its admission was offered should have been raised on direct appeal." We agree. As noted above, the existence of the 911 calls was a matter of record, and the trial transcript indicates that the prosecution and defense counsel discussed whether either side planned to enter those records into evidence. Further, any claim that the trial court's reference during the bench trial to "[t]wo or three" 911 calls somehow evinced deceit on the part of the court could have been raised on direct appeal, and, therefore, is barred by the doctrine of res judicata.

{¶13} Appellant contends in her second "claim" that the trial court permitted witnesses, including a police officer, to commit perjury. Appellant has attached to her appellate brief a copy of an informational summary prepared by Officer Anthony C. Roberts. This summary, however, was not part of the materials submitted to the trial

court in the petition to vacate or set aside the conviction, and appellant never raised the issue of perjury by a police officer before the trial court. Accordingly, appellant has waived review of that claim for purposes of appeal. *State v. Lariva*, 10th Dist. No. 08AP-413, 2008-Ohio-5499, ¶21 (a petitioner's failure to raise claims in petition for post-conviction relief before the trial court constitutes a waiver of those claims on appeal).

{¶14} Appellant argues under her third "claim" that the trial court was not impartial and promulgated falsehoods during the bench trial regarding the victim's injuries. Specifically, appellant cites the court's reference to the victim having received 15 stitches as a result of the incident.

{¶15} A review of the trial transcript indicates the victim was asked during direct examination whether she knew "approximately how many stitches you received?" (Tr. 29.) The witness responded: "I thought they told me 15." (Tr. 29.) The trial court later noted this witness's testimony in a discussion with counsel during closing arguments. Appellant maintains that medical records of the victim, not introduced at trial, indicated the victim only received five stitches.

{¶16} In her post-conviction petition before the trial court, however, appellant did not raise the issue of a discrepancy between the trial testimony and medical records regarding the number of stitches the victim received, nor did appellant argue that the trial court acted in a less than impartial manner in citing the victim's testimony that she received 15 stitches. This claim, therefore, not having been raised by appellant in her post-conviction petition, is waived for purposes of appeal.

{¶17} Appellant did contend, in her post-conviction petition, that the medical records of the victim were pertinent in the context of the victim's purported voluntary

intoxication; appellant also alleged a due process violation because the victim's blood alcohol content was not disclosed in the victim's medical records.

{¶18} Regarding the latter claim, the trial court noted that medical records were "devoid of any laboratory analysis as to the victim's blood alcohol content," and that appellant "presented no evidence or documentation to show that an analysis of the victim's blood alcohol content was even performed." Further, the court observed, evidence as to the victim's purported intoxication "was thoroughly examined during the trial," and the trial court "was fully aware of that issue, and the possible impact it had on not only [the victim's] overall credibility as a witness but also its potential importance given the self-defense position taken by [appellant]." The trial court thus found that this claim was barred by *res judicata*.

{¶19} Upon review we find no error by the trial court. We construe appellant's third claim as raising an ineffective assistance of counsel argument based upon appellant's citation to *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. As noted by the trial court, even though defense counsel did not seek admission of the victim's medical records, the trier of fact was aware of defense counsel's theory that the victim's memory of the events was clouded by alcohol consumption. In appellant's direct appeal, this court cited "testimony concerning [the victim's] consumption of alcohol that evening." *Vinson* at ¶36. That evidence included the testimony of Columbus Police Officer Anthony Roberts, who stated that the victim "appeared to be intoxicated." *Id.* at ¶17. Further, this court rejected appellant's contention that she received ineffective assistance of counsel based upon her claim that "her counsel should have presented more evidence concerning [the victim's] intoxication." *Vinson* at ¶44. This court declined

to second-guess defense counsel's decisions about whether to call medical personnel, and overruled appellant's assignment of error alleging ineffective assistance of trial counsel.

{¶20} In considering claims of ineffective assistance of counsel in the context of post-conviction relief, the Supreme Court of Ohio has observed "it is not unreasonable to require the defendant to show in his petition for postconviction relief that such errors resulted in prejudice before a hearing is scheduled." *Calhoun* at 283, citing *State v. Jackson* (1980), 64 Ohio St.2d 107, 112. In the instant case, even assuming res judicata did not bar the issue of whether counsel's performance was deficient in failing to seek admission of the victim's medical records, appellant cannot demonstrate prejudice as evidence of the victim's purported intoxication was presented at trial and evaluated by the trier of fact.

{¶21} Appellant argues, under her fourth "claim," that photographic evidence depicting blood drops on her porch was withheld. We initially note that it is not entirely clear whether appellant contends such photographs were actually taken. In her post-conviction petition, appellant argued that blood drops on her porch "should" have been photographed. Appellant further argued, however, that exculpatory photographs had not been turned in by the prosecutor. In support of her claim of an alleged violation under *Brady v. Maryland* (1963), 373 U.S. 83, 83 S.Ct. 1194, appellant submitted with the petition her statement that she had "witnessed 3 blood drops on my porch" following the incident. In addressing appellant's claim, the trial court concluded that this evidence would have been available at the time of trial, citing appellant's notarized statement that she personally observed blood drops following the incident.

{¶22} In order to establish a violation under *Brady*, "the defendant must prove that the prosecution suppressed evidence, the evidence was favorable to the defense, and the evidence was material." *United States v. Erickson* (C.A.10, 2009), 561 F.3d 1150, 1163. A *Brady* claim fails, however, "if the existence of favorable evidence is merely suspected." *Id.* Further, a defendant must also show that the favorable evidence was in the possession or control of the prosecution, and "a defendant is not denied due process by the government's nondisclosure of evidence if the defendant knew of the evidence anyway." *Id.* See also *Carter v. Bell* (C.A.6, 2000), 218 F.3d 581, 601, quoting *United States v. Mullins* (C.A.6, 1994), 22 F.3d 1365, 1371 ("'*Brady* is concerned only with cases in which the government possesses information which the defendant does not [and] 'there is no *Brady* violation if the defendant knew or should have known the essential facts permitting him to take advantage of the information in question, or if the information was available to him from another source"). *Id.*

{¶23} In the present case, as noted by the trial court, appellant was aware of the evidence she contends was withheld, as reflected in her statement attached to the petition. We note that appellant also testified during the bench trial to observing three blood drops on her porch. While appellant contends that she observed three blood drops on her porch, she has not submitted any operative facts to support her argument that evidence was withheld. This court has previously held that *res judicata* precludes a petitioner "from 're-packaging' evidence or issues which either were, or could have been, raised in the context of the petitioner's trial or direct appeal." *State v. Hessler*, 10th Dist. No. 01AP-1011, 2002-Ohio-3321, ¶37. Inasmuch as appellant was aware of this purported evidence prior to trial, we find no error with the trial court's determination that



this claim is barred by the doctrine of res judicata. *State v. Gau*, 11th Dist. No. 2008-A-0030, 2008-Ohio-6988 (appellant's claim of due process violation barred by res judicata where appellant was aware at time of trial of existence of photos and state's alleged failure to provide them to his attorney).

{¶24} Appellant's fifth "claim" summarily asserts: "[I]t is conceivable that my transcript testimony would be change[d]." (Appellant's brief, at 6.) This claim, however, was not raised before the trial court, and is therefore waived for purposes of appeal. *Lariva* at ¶21.

{¶25} Based upon the foregoing, appellant's single assignment of error is without merit and is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

*Judgment affirmed.*

BRYANT and TYACK, JJ., concur.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

(File) ✓  
**FILED**  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
2009 MAY -7 PM 3:13  
CLERK OF COURTS

State of Ohio, :  
Plaintiff-Appellee, :  
v. : No. 08AP-381  
Ella B. Vinson, : (C.P.C. No. 07CR09-6859)  
Defendant-Appellant. : (REGULAR CALENDAR)

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**MEMORANDUM DECISION**

Rendered on May 7, 2009

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly M. Bond*,  
for appellee.  
*Ella B. Vinson*, pro se.

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**ON APPLICATION FOR REOPENING**

FRENCH, P.J.

{1} Pursuant to App.R. 26(B), defendant-appellant, Ella B. Vinson ("appellant"), moves to reopen her appeal in *State v. Vinson*, 10th Dist. No. 08AP-381, 2008-Ohio-6430. We journalized the judgment entry in *Vinson* on December 9, 2008. Appellant filed the App.R. 26(B) application on March 20, 2009, which was beyond the 90-day deadline. Appellant must show good cause for the untimeliness in order for us to review the application. See *State v. Witlicki*, 74 Ohio St.3d 237, 238, 1996-Ohio-13; App.R. 26(B)(1) and (2)(b). Appellant asserts that she did not receive the decision and judgment entry until December 15, 2008. This brief delay does not establish good

cause because appellant still had sufficient time to file the application by the deadline. Appellant also contends that she experienced delay in obtaining records from the police. This contention does not establish good cause because appellant does not prove how the delay prevented her from filing a timely application.

{¶2} In any event, appellant's application fails on the merits. Under App.R. 26(B), a defendant in a criminal case may apply to reopen an appeal for ineffective assistance of appellate counsel. Appellant criticizes appellate counsel for not challenging findings that the trial court, as trier of fact, made and for not raising additional claims of trial counsel's ineffectiveness. These issues would not have properly been before this court on direct appeal because they are based on evidence outside the record of the trial proceedings. See *State v. Davis*, 10th Dist. No. 05AP-193, 2006-Ohio-193, ¶19. Appellant attached the evidence to her application, but this does not make the evidence part of the trial record. See *State v. Moore*, 93 Ohio St.3d 649, 650, 2001-Ohio-1892. Because appellant's issues would not have been properly before this court on direct appeal, appellate counsel was not required to raise them. See *Davis*, at ¶19; *State v. Reynolds-Bey* (Feb. 5, 2009), 10th Dist. No. 07AP-706, ¶7 (memorandum decision). Thus, we conclude that appellate counsel was not ineffective for not raising appellant's issues. Accordingly, we deny appellant's App.R. 26(B) application for reopening.

*Application for reopening denied.*

TYACK and BROGAN, JJ., concur.

BROGAN, J., of the Second Appellate District, sitting by  
assignment in the Tenth Appellate District.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
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FRANKLIN CO OHIO  
2009 MAY -7 PM 4:01  
CLERK OF COURTS

State of Ohio, :  
Plaintiff-Appellee, :  
v. :  
Ella B. Vinson, :  
Defendant-Appellant. :

No. 08AP-381  
(C.P.C. No. 07CR09-6859)  
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on May 7, 2009, it is the order of this court that appellant's App.R. 26(B) application for reopening is denied.

FRENCH, P.J., TYACK and BROGAN, JJ.

By Judith L. French  
Judge Judith L. French, P.J.

BROGAN, J., of the Second Appellate District, sitting by assignment in the Tenth Appellate District.

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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2008 DEC -9 PM 2:29  
CLERK OF COURTS

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-381
v.	:	(C.P.C. No. 07CR09-6859)
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

O P I N I O N

Rendered on December 9, 2008

*Ron O'Brien, Prosecuting Attorney, and Kimberly M. Bond,*  
for appellee.

*The Thompson Legal Firm, and Lisa Fields Thompson,*  
for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Ella B. Vinson, appeals from the judgment of the Franklin County Court of Common Pleas, which found Vinson guilty of felonious assault. For the following reasons, we affirm.

{¶2} On September 20, 2007, the Franklin County Grand Jury indicted Vinson on one count of felonious assault, a second-degree felony, in violation of R.C. 2903.11.

Vinson waived her right to a jury trial, and the case proceeded to a bench trial on February 22, 2008.

{¶3} At trial, Aleta Straight testified on behalf of plaintiff-appellee, the State of Ohio, and stated the following. On September 11, 2007, at about 7:00 p.m., Straight was at her daughter's apartment with her two granddaughters. Debbie Porter, Brenda Knight, and Susie Walden were sitting in front of Porter's apartment, and Straight joined them. Straight's two granddaughters began playing with other children nearby.

{¶4} While the four women sat in front of Porter's apartment, Straight heard Vinson yelling "black apes" at the children, so she went to get her grandchildren. When she returned, she stopped in front of Vinson's apartment and said to Vinson "why are you calling the children black apes, and then she grabbed my arm. She said I don't have to answer to you, you White B. And she grabbed my arm and pulled me to the edge of her porch and proceeded to slash at me and stab me." (Tr. 18.) The entire incident lasted "a matter of seconds. Maybe a minute." (Tr. 22.)

{¶5} Straight had nothing in her hands, and she "had no intentions of going there for an altercation." (Tr. 23.) Vinson slashed Straight's left hand and right arm. Straight did not realize immediately that she had been injured. She was "in shock, disbelief." (Tr. 24.) Straight had never seen Vinson before.

{¶6} Straight "had had a few drinks" that evening. (Tr. 27.) She was drinking bourbon, and she had consumed two drinks within 45 minutes prior to the incident. She was not intoxicated.

{¶7} Walden called 911, and Vinson was transported to the emergency room. She received 15 stitches.

**{¶8}** On cross-examination, Straight testified that she was not intoxicated at the hospital, but she was "very upset, in pain and in shock." (Tr. 40.) When asked whether she would be surprised to learn that the emergency room doctor said she was intoxicated, Straight stated, "No, because the way I was acting, he might have thought I was." (Tr. 41.) When asked whether she was cursing at the medical staff, Straight stated, "I probably was. You do crazy things in shock." Id. She denied having a drinking problem or a history of drunken altercations. She admitted to having an "OMVI," and to an outstanding warrant for her arrest. Id. In an apparent effort to determine Straight's tolerance for alcohol, the court asked Straight about her drinking that evening. Straight replied, "Sir, I drink all the time." (Tr. 50.)

**{¶9}** Debbie Porter testified on behalf of the state. Vinson was standing on the front porch and was calling the children names. Vinson pulled Straight onto the porch, making stabbing motions. Straight was "flailing her arms." (Tr. 58.) Porter had never had any problems with Vinson. (Tr. 60.)

**{¶10}** Porter saw Straight and Knight have one or two drinks that evening. Porter was not drinking, nor was Walden. Porter said that Straight "wasn't weaving and wobbling and falling down and everything else. She wasn't that intoxicated." (Tr. 75.) Porter was taking pain medication at that time, but it did not impair her ability to see or hear what happened.

**{¶11}** Susie Walden also testified and essentially confirmed the other witnesses' testimony. She said that Vinson was calling the children "black apes and black asses" and that Vinson pulled Straight onto her porch and stabbed her. (Tr. 78.) Walden also testified that she had known Vinson for about nine years and used to

associate with her, but that they had had a "falling out." (Tr. 82.) She said that she had had arguments with Vinson about Vinson "messing with the kids." Id. On the evening in question, she had said "a few choice words" to Vinson. (Tr. 83.) On cross-examination, Walden admitted that the neighborhood children sing a derogatory song about Vinson and that she and Vinson had had other incidents between them.

{¶12} Brenda Knight also testified. She stated that she was directly behind Straight and told Straight not to say anything to Vinson. She said she heard Vinson call the children names, heard Straight's question to Vinson, and heard Vinson's response. She said that Straight did not touch Vinson and did not have anything in her hands. Instead, Vinson "just pulled her on the porch and just started stabbing her." (Tr. 103.)

{¶13} Knight also confirmed that she had been drinking that night and "had had one or two shots" of Canadian Mist. (Tr. 105.) She was not intoxicated, however. She did not think Straight was intoxicated that evening, but described Straight as being "in shock" after the stabbing. (Tr. 106.)

{¶14} On cross-examination, Knight agreed that the complex is in a "high-crime neighborhood" and that many people carry weapons. (Tr. 108.) Contrary to her direct testimony, Knight stated that she had not heard Vinson call the children names that evening, but that one of the children came to the four of them and said that Vinson had called them names. Knight also testified that Vinson stabbed Straight four or five times, and on her arm and head. In response to further examination and the court's questions, Knight said that she had taken pain medication that day, but that it did not interfere with her ability to see things clearly. Finally, Knight stated that Straight had her hands in front of her while Vinson was stabbing her and that Straight was trying to protect herself.

{¶15} Columbus Police Officer Anthony Roberts testified that he responded to a call regarding a stabbing. When he arrived, he observed a woman "bleeding from the arm, hysterical." (Tr. 124.) He recovered the knife from Vinson, who admitted stabbing Straight. He described the knife as "a kitchen knife. More of a paring knife. Brown wooden handle. Maybe two, three-inch blade." (Tr. 126.) Roberts identified exhibits depicting "blood spatter and blood drops" at the scene. (Tr. 128.) The blood was on the sidewalk, leading away from Vinson's porch.

{¶16} Roberts stated that, while being transported, Vinson told her side of the story. She said, "it's okay for them to come to my door and call me names and cuss me out, but when I call them little black apes, everybody gets upset." (Tr. 130.) She said she knew "it was wrong, I shouldn't have done it." Id.

{¶17} Roberts also stated that Straight appeared to be intoxicated. On cross-examination, Roberts confirmed that Vinson had called 911, did not attempt to conceal the knife, and was cooperative.

{¶18} After this testimony, and following admission of the state's exhibits, the state rested. Vinson's counsel then moved for directed verdict under Crim.R. 29. The court denied it without discussion.

{¶19} Vinson testified to the following. She is a college graduate and has performed accounting work. She had no prior criminal record.

{¶20} On September 11, 2007, she arrived home at about 7:00 p.m. She had some gardening to do, "grabbed a little kitchen knife and went outside." (Tr. 143.) She saw the four women gathered and said she knew only three of them. She was on the phone at the time. "The next thing you know, this lady was right in front of me. I was

sitting in my chair. This lady came. As soon as I seen her, I smelled her." (Tr. 145.) Vinson said she stood up and said, "excuse me, ma'am, can I help you?" Id. The woman, whom Vinson identified as Straight, did not respond. Vinson described Straight as "intoxicated" and "reek[ing] of alcohol." Id. "[S]he had saliva coming down the right side of her mouth. She really looked disheveled." Id. Vinson stated the following:

I put my hand on the door. This lady grabbed me from behind. Like I said, she was bigger. I had a knife and my phone in my left hand, and I'm trying to open my door with the right hand. This lady put her left hand around my left arm. The front of her body was up against the back of my body. As I'm trying to open the door, she's knocking my [hand] from the handle. I couldn't even get in my house.

(Tr. 147.)

{¶21} Vinson said that she "had to do a 360" to get out of Straight's arms. (Tr. 148.) In an effort to get away from Straight, Vinson "tapped her with the knife on her wrist." Id. Even after Vinson went inside, Straight did not move away from the door, so Vinson opened the door and said, "lady, you just been stabbed." (Tr. 148-149.) Vinson said that she felt like she was "being abducted. That's what scared me to death." (Tr. 150.)

{¶22} On cross-examination, Vinson admitted that she did not see Straight with a weapon, Straight did not threaten her, and Straight did not act aggressively toward her. She said, however, that she could not get away from Straight. She did not stab Straight until she tried to get to her door, and Straight stopped her and grabbed her from behind. She denied calling the children names and denied that Straight ever said anything to her.

{¶23} Tamara Harvey testified on Vinson's behalf. Harvey lives in an apartment that allows her to see both Vinson's porch and Porter's apartment. She stated that she observed the four women in front of Porter's apartment that evening. She said "[t]hey had all been drinking all day." (Tr. 178.)

{¶24} Harvey heard Walden say to Vinson that she (Walden) was "going to beat you up, you bald-headed \* \* \* and you be this, you be that, and was cussing her out, you know." (Tr. 180.) Harvey was leaving her apartment and did not see what occurred, but she did see Straight with blood on her. She said that the difficulty between Vinson and Walden had been going on for years. She has never heard Vinson call the neighborhood children names.

{¶25} Rhonda Stonerock also testified on Vinson's behalf. She said that she heard the exchange between Vinson and "the three culprits," but she did not see the altercation between Vinson and Straight. (Tr. 184.)

{¶26} Following this testimony and the admission of exhibits, Vinson rested. Vinson's counsel renewed the Crim.R. 29 motion, which the court denied.

{¶27} At closing, the state argued that Vinson committed felonious assault, first, by knowingly causing an injury to Straight, and second, by causing an injury with a deadly weapon. The state also argued that Vinson failed to prove self-defense.

{¶28} Defense counsel argued that Vinson had proven self-defense. He identified the following three elements in support: (1) Vinson was not at fault in creating the violent situation; (2) Vinson "had an honest belief that she was in imminent danger of death or great bodily harm"; and (3) Vinson "did not violate any duty to retreat or

avoid the danger." (Tr. 201, 204.) Counsel also argued that Vinson did not use excessive force.

{¶29} One week after trial, the court held a hearing at which it announced its decision. In discussing Vinson's claim of self-defense, the court referred to *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, *State v. Barnes*, 94 Ohio St.3d 21, 2002-Ohio-68, and *State v. Williford* (1990), 49 Ohio St.3d 247. Relying on the standards set forth in those cases, the court concluded that Vinson had not proven self-defense. The court found Vinson guilty of second-degree felonious assault.

{¶30} On March 13, 2008, Vinson filed a "renewed" Crim.R. 29 motion for acquittal. In it, she asserted that her counsel had inadvertently argued the wrong standard for self-defense. Specifically, Vinson argued that counsel should have relied on the standard for self-defense where non-deadly force is used, rather than the more stringent standard where deadly force is used. Under the non-deadly force standard, Vinson argued, she should be acquitted.

{¶31} On March 14, 2008, the court denied Vinson's motion. Even under a more relaxed standard applicable to circumstances involving non-deadly force, the court concluded, Vinson had not met her burden to prove that she acted in self-defense.

{¶32} Vinson appeals, and she raises the following assignments of error:

#### FIRST ASSIGNMENT OF ERROR

The trial court violated [Vinson's] rights to due process and a fair trial when it entered a judgment of conviction against her, when that finding was against the manifest weight of the evidence. Fifth and Fourteenth Amendments to the United States Constitution and Section 16, Article I of the Ohio Constitution.

**SECOND ASSIGNMENT OF ERROR**

[Vinson's] attorney provided her with the ineffective assistance of counsel and violated her rights to due process and a fair trial. Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution.

{¶33} In her first assignment of error, Vinson asserts that her conviction for felonious assault was against the manifest weight of the evidence. We disagree.

{¶34} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. We review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we determine " 'whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact \* \* \* unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, Franklin App. No. 02AP-11, 2002-Ohio-5345, at ¶10, quoting *State v. Long* (Feb. 6, 1997), Franklin App. No. 96APA04-511.

{¶35} R.C. 2903.11(A)(2) defines "felonious assault" as knowingly causing or attempting to cause physical harm to another by means of a deadly weapon or dangerous ordnance. Straight's testimony, as corroborated by Knight, Walden, and

Porter, supports the court's findings that Vinson's actions were intentional. They all testified that Vinson pulled Straight onto the porch. Vinson herself testified that she stabbed Straight. Although Vinson cut Straight with a kitchen knife, the cut was sufficiently serious as to require emergency treatment and 15 stitches.

{¶36} We acknowledge the testimony concerning Straight's consumption of alcohol that evening, as well as consumption by Knight. We must also consider, however, that Straight testified to a high tolerance for alcohol and to being in shock following the incident. While Knight and Porter testified to some use of pain medication, they both testified that this medication did not impair their ability to observe what happened. As the state argues, "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Furthermore, a criminal defendant "is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial." *State v. Timmons*, Franklin App. No. 04AP-840, 2005-Ohio-3991, ¶10. Rather, "[t]he trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible." *Id.*

{¶37} Vinson also argues that the weight of the evidence supported her claim for self-defense. In order to prove self-defense against non-deadly force, Vinson had to show (1) that she was not at fault for creating the situation giving rise to the altercation with Straight, (2) that she had reasonable grounds to believe that she was in imminent danger of bodily harm, and (3) that her only means to protect herself from that danger was by the use of force not likely to cause death or great bodily harm. *State v. D.H.*,

169 Ohio App.3d 798, 2006-Ohio-6953, ¶30; *State v. Griffin*, Montgomery App. No. 20681, 2005-Ohio-3698, ¶18. We agree with the trial court's conclusion that Vinson did not make this showing.

{¶38} First, there was evidence that Vinson created the situation that gave rise to the altercation by calling the children names. Although Vinson denied this accusation, Officer Roberts testified that Vinson admitted that she called the children "little black apes." (Tr. 130.) More importantly, there was testimony from four witnesses that Vinson initiated physical contact with Straight by pulling Straight toward her and up the one step to her porch. While Vinson's witnesses stated that they heard words exchanged between Walden and Vinson, they did not see the altercation between Vinson and Straight and did not support Vinson's testimony that she did not initiate contact with Straight.

{¶39} Second, the evidence does not support a finding that Vinson held an honest belief that she was in imminent danger of bodily harm. Vinson testified that Straight did not have a weapon, did not threaten her, and did not act aggressively toward her. While Vinson stated that she felt she was being abducted and felt threatened, her version of how the stabbing occurred—in the course of her 360-degree turn while being held in Straight's arms—lacks credibility, as does her explanation that she only tapped Straight with the knife to get free. And, her testimony concerning her own actions following the stabbing—once she got free, she opened the door to tell Straight that she had been stabbed—does not suggest that she was in great fear of Straight.

{¶40} Third, Vinson's own testimony supports a finding that she could have used other means to free herself from Straight. Although Vinson described Straight as larger than she, Vinson also described Straight as elderly and having the appearance of a homeless person who was lost. While, if true, the presence of such a person would be unsettling, there is no suggestion that Straight presented a physical danger to Vinson so as to justify Vinson's violent actions.

{¶41} For all these reasons, we conclude that the weight of the evidence supported Vinson's conviction for felonious assault. Accordingly, we overrule her first assignment of error.

{¶42} In her second assignment of error, Vinson argues that her counsel provided ineffective assistance. We disagree.

{¶43} The United States Supreme Court established a two-pronged test for ineffective assistance of counsel. *Strickland v. Washington* (1984), 466 U.S. 668. First, the defendant must show that counsel's performance was outside the range of professionally competent assistance and, therefore, deficient. *Id.* at 687. Second, the defendant must show that counsel's deficient performance prejudiced the defense and deprived the defendant of a fair trial. *Id.* A defendant establishes prejudice if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

{¶44} Vinson's primary argument in this respect is that her counsel should have presented more evidence concerning Straight's intoxication. She infers from her counsel's questioning that the emergency room doctor believed that Straight was



intoxicated and abusive toward the medical staff. This additional evidence, Vinson argues, would have supported her claim of self-defense.

{¶45} Because Straight's medical records were not admitted as evidence, we have no way of determining, on this record, what they contained. Nor can we determine whether counsel contacted medical personnel, including the emergency room doctor, and decided, as a matter of trial strategy, that this testimony would not be helpful to Vinson. We will not second-guess a trial attorney's decisions about whether to call a witness. *State v. Treesh*, 90 Ohio St.3d 460, 490, 2001-Ohio-4. Nor will we speculate about whether that witness' testimony would have been helpful to a defendant's case. Having no grounds on which to conclude that Vinson's trial counsel was ineffective, we overrule her second assignment of error.

{¶46} In summary, we overrule Vinson's first and second assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

TYACK and BROGAN, JJ., concur.

BROGAN, J., of the Second Appellate District, sitting by assignment in the Tenth Appellate District.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
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CLERK OF COURTS

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 08AP-381
v.	:	(C.P.C. No. 07CR09-6859)
	:	
Ella B. Vinson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on December 9, 2008, appellant's two assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

FRENCH, TYACK, and BROGAN, JJ.

By Judith L. French  
Judge Judith L. French

BROGAN, J., of the Second Appellate District,  
sitting by assignment in the Tenth Appellate  
District.

2933.22

**2933.22 Probable cause for search warrant.**

(A) A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized.

(B) A warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare.

Effective Date: 10-23-1972

**2933.23 Search warrant affidavit.**

A search warrant shall not be issued until there is filed with the judge or magistrate an affidavit that particularly describes the place to be searched, names or describes the person to be searched, and names or describes the property to be searched for and seized; that states substantially the offense in relation to the property and that the affiant believes and has good cause to believe that the property is concealed at the place or on the person; and that states the facts upon which the affiant's belief is based. The judge or magistrate may demand other and further evidence before issuing the warrant. If the judge or magistrate is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe that they exist, he shall issue the warrant, identifying in it the property and naming or describing the person or place to be searched.

A search warrant issued pursuant to this chapter or Criminal Rule 41 also may contain a provision waiving the statutory precondition for nonconsensual entry, as described in division (C) of section 2933.231 of the Revised Code, if the requirements of that section are satisfied.

Effective Date: 11-20-1990

**2921.44 [Effective Until 3/23/2015] Dereliction of duty.**

(A) No law enforcement officer shall negligently do any of the following:

(B) No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

Effective Date: 06-08-2000

**Note:** This section is set out twice. See also § 2921.44 , as amended by 130th General Assembly File No. TBD, HB 10, §1, eff. 3/23/2015.

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