

ORIGINAL

IN THE THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff – Appellee

ON APPEAL FROM THE  
CUYAHOGA COUNTY COURT  
OF APPEALS, EIGHTH DISTRICT  
CASE NO:100805

vs.

C. A. No. 2015-0718

ANDREY L. BRIDGES

Defendant – Appellant

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MOTION FOR IMMEDIATE STAY WHILE CASE NO. CA-103090 AND  
CASE NO. CA-102930 IN THE CUYAHOGA COUNTY EIGHTH DISTRICT COURT OF  
APPEALS IS STILL PENDING FOR DECISION AND JUDGMENT PURSUANT TO 70.1 a(b)  
**(ACTUAL INNOCENCE)**  
**NOTICE**

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ANDREY L. BRIDGES - #650-493  
LAKE ERIE CORRECTIONAL INSTITUTE  
501 THOMPSON RD  
P.O. BOX 8000  
CONNEAUT, OHIO 44030

DEFENDANT-APPELLANT, *PRO SE*

TIMOTHY J. MCGINTY  
CUYAHOGA COUNTY PROSECUTOR

T. ALLAN REGAS (0067336)  
Assistant Prosecuting Attorney  
CUYAHOGA COUNTY PROSECUTOR  
The Justice Center, 9<sup>th</sup> Floor  
1200 ONTARIO STREET  
CLEVELAND, OHIO 44113  
(216) 443-7800

**FILED**  
JUL 28 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

**RECEIVED**  
Counsel for Plaintiff-Appellee:  
JUL 28 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

## MOTION FOR IMMEDIATE STAY OF EXECUTION OF THE JUDGEMENT MANDATE

Pursuant to S. Ct. Prac. R. 7.01(A)(3) and S. Ct. R.4.01(A)(2), appellant Andrey Bridges moves this court for an order staying execution of the judgment of Case No. 2015-0718 appeal from App. R.26(B) until the Cuyahoga County Eighth District Court of Appeals Case No. CA-102930 and Case No. CA-103090 issues a decision regarding ineffective assistance of counsel, subject matter jurisdiction, speedy trial violation, and prosecution misconduct, argued in Case No. CA-102930. And abuse of discretion, admitting inflammatory and gruesome photos, and an excessive bond in Case No. CA-103090. The appellant moves this Honorable court to accept this motion to stay for discretionary review, and the merits of the 26(b) appeal.

After spending over 2 years in prison for murder, gross abuse of a corpse and, tampering with evidence the appellant- Bridges; has discovered that he has a true claim of factual innocence. Based on a police report that was filed and never challenged. Bridges also argues that he could not raise this argument in his previous appeals and in trial, since he had no assistance by both trial and appeal counsels, and thus has filed ineffective assistance of counsels in his appeals, so the claim could not have been raised before.

Appellant also claims that he did mention this claim before in trial court on his first petition for post conviction dated 7-23-2014 but was denied dated 7-29-2014; for not having the documents supporting the claim. in which he was not awarded to them until after the filings. Also when he tried to appeal this after receiving a finding of fact and conclusion of law he received two appeal numbers. CA-101938. and, 101942; for the same cause. This is the reason the appellant has submitted an successive post conviction Case No. CA-102930.

The appellant Bridges has claimed real issues effecting constitution violations via actual innocence, the trial court has not followed the law by not giving the reasons why they have dismissed his claims leaving the appellant limited information on appeal issues in an abuse of discretion mind frame, and again "since the event of actual innocence finding is being raised". This alternative ruling puts the case in pre-trial posture rendering Mr. Bridges eligible for release on bond and/or relief under constitutional mandates of bail. (emphasis added)

This Actual innocence claim could also be shown using factual innocence not legal. On May 13, 2013, a Cuyahoga County Grand Jury indicted the defendant-appellant Andrey Bridges for multiple offenses. Count One charged Aggravated Murder in violation of R.C 2903.02(A). Count Two charged an alternative theory of Murder in violation of R.C. 2903.02(B). Count Three charged Felonious Assault in violation of R.C 2903.11(A) (1). Count Four charged Kidnapping in violation of R.C 2905.01(A)(2). Count Five charged Tampering with Evidence in violation of R.C 2921.12(A)(1). Finally, Count Six charged Offenses Against a Human Corps in violation of R.C 2927.01(B). Bridges entered a plea of not guilty at his arraignment on May 10, 2013.

A jury trial began on October 28, 2013. At the closing of the state's case, the trial court granted a defense Rule 29 motion to dismiss Count Four, Kidnapping. On November 8, 2013, the jury returned a verdict of not guilty on Count One aggravated murder 2903.01. But guilty of Murder R.C 2903.02(A) on Count two, the jury found Bridges guilty of the lesser included offense of the murder.

The court merged the first three counts Murder R.C 2903.02(A); Murder 2903.02 (b) and Felonious Assault R.C.2903.11.(A) (1). The state elected to go forward with the lesser included offense of count one, R.C 2903.02(A). The court sentenced Bridges to serve a term of 15 years to life for this offense. In addition, the court sentenced Bridges to a term of thirty months for Count Five, Tampering With Evidence R.C. 2921.12 (A) (1) and twelve months for Count Six; Gross Abuse Of A Corpse. All to be consecutive. To a sum of 20 years 6 months to life with a possibility of parole after 15 years.

On December 30, 2013, Bridges filed a request for the granting of a delayed appeal to the Eighth District Court of Appeals, as appointed counsel had not been notified of his appointment. The Eighth District Court granted the motion on January 17, 2014.

The state charged the defendant-appellant Andrey Bridges with the murder of Carl Acoff on May 13, 2013. On January 5<sup>th</sup> 2013, Acoff allegedly took a taxi to the residence of Quiniones. The body of Acoff was found in a pond. State witnesses, Jason Quinones and William King, testified that on the morning in question, they saw Bridges burning materials thought to be evidence outside the apartment. The defense did not argue that these two men, Quinones and King, were more likely to have committed the offense. The defense did not argue that the evidence was insufficient to prove that Bridges was the offender, regardless of the identity of the assailant.

Jeffrey Bland lived in Olmsted Township in April of 2013. He rented one side of this property to a Jason Quinones. Bryan Tyler of the Olmsted Township Police Department answered a call to investigate an object in the pond near the premises. He testified that a body was poled in by the fire department personnel from the pond. (T.646) Officer Tyler photographed the scene. (T.647) Ken Schabitzer made a dive on April 17, 2013 at the pond site. He assisted in the recovery of the body. He also found some yellow rope that was draped over the body. The other end of the rope was tied to some length of pipe at one end and a cinder block at the other. (T.696) It was determined that the pond was about eight feet in depth at its deepest point. (T.697) Martha Acoff was the mother of the decedent. (T.791) She testified that she noticed that her son Carl, decedent, began dressing as a girl in 2010. (T.792,795) The last time she saw him was New Year's Eve.

No one else in the family heard from him after this time. (T.797, 798) Nicole Cantie was the decedent's cousin. She knew his lifestyle due to his posting photos on Facebook. She was not aware that he was prostituting himself until seeing something on social media. (T.818,819) She also noticed that he went missing in January of 2013. (T.820) On March 29, 2013, she filed a missing persons report. (T.821) Ms. Cantie testified that she was aware that

there were Facebook postings in January from Carl Acoff. One was January 12 and another was January 22. (T.831) She also noted that she had spoken to him on January 3. (T.835) Abdifatah Mohamoud was the driver of the taxi. The rider he picked up from Rondell Road looked like a man or a female, but he was not certain.(T.1048) Mohamoud selected Bridges from a photo array on May 3,2013. He was not certain of this selection. (T.1053) He thought he recognized his face from the photo array. It kind of looked like the customer. (T.1056) He did not remember because of the lighting conditions on that particular day. He did not remember what clothes that they were wearing.

### ARGUMENT AND LAW

The trial court erred by entering a judgment of conviction of murder and felonious assault are against the sufficiency and manifest weight of the evidence, in derogation of Defendant's right to due process of law, as protected by the Sixth and Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

Due process clause of Federal Constitution prohibits criminal conviction of any person except upon proof of guilt beyond reasonable doubt. *Jackson v Virginia* (1979) 443 US 307, 99 S Ct 2781, 61 L Ed 2d 560, reh den (1979) 444 US 890, 100 S Ct 195, 62 L Ed 2d 126. When a court reviews a record for sufficiency, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

The prosecution has the burden of proving a defendant's guilt beyond a reasonable doubt. It was plain error under Ohio R. Crim. P. 56(B) when the jury returned a verdict of murder and felonious assault upon the appellant in this case.

Therefore, as a matter of law, this was a serious miscarriage of justice. *State v. Shabazz* The Court of Appeals for Cuyahoga County, Ohio No. 100021 {¶20} Crim.R.29 mandates that the trial court issue a judgment of acquittal where the state's evidence is insufficient to sustain a conviction for the offense. Crim. R. 29(A) and a sufficiency of the evidence review require the same analysis. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, N.E.2d 386. When the state has not produced at least a modicum of evidence on each element of the crime, the question is whether the quantum of evidence produced by the state, when viewed in a light most favorable to the prosecution, is sufficient to allow any rational trier of fact to draw the conclusion that the accused is guilty beyond a reasonable doubt.

In the instant matter, there were a significant time difference in which the State claimed the murdered occurred. The Bill of Particulars stated it occurred on or about January 5, 2013. The Complaint stated it happened on or about April 17, 2013. The forensic pathologist, Dr. Andrea Wiens, who examined the body, was unable to specify the exact date and time of the alleged victim's (Acoff) death. (T. 724, 733) Daniel Mabel, a forensic scientist with the coroner's office testified that he examined ropes and binding in addition to the victim's clothing. (T.954) He compared the rope from the tree near the pond to the rope binding the victim. It was not consistent. (T.954) No DNA test was performed. (T.960) The knife tip recovered from the victim's skull did not match the blue pocketknife or any of the knives submitted from the investigation. (T.979) Mabel (the forensic scientist) noted that he could not observe any bloodstains on the clothing. (T. 993) Christine Ross of the State of Ohio Bureau of Investigation (Cuyahoga County Medical Examiner's) testified she examined the DNA

profile taken from the heater in this case. The minor components profile had insufficient data and therefore was inconclusive. (T. 1414) The only piece of evidence found consistent with the investigation was a rope, **which was found in a common area** (the garage).

The state failed to prove by credible evidence that Bridges was the actual person that committed the murder. Moreover, there was no overwhelming evidence of Bridges guilt at trial. Thus, harmful and the tainted evidence was used to establish his guilt. The witnesses testifying for the State were Quinones, Bill King, Irene Liptken, Candice Peracchio, Martha Acoff, Ken Schabitzer, Jeffery Bland and Paul Schmitt. Their testimonies were speculated hearsay and contained numerous inconsistencies. The jury was primarily responsible for determining the credibility of witnesses and the relative weight of their conflicting testimony.

Circumstantial evidence to justify the inference of guilt must exclude to a moral certainty every other reasonable hypothesis. The prosecution should have proved each and every link in it's chain of evidence beyond reasonable doubt. Where the inferences were different, the facts were not drawn to conclude guilt. Therefore, the jury should have presumed in favor of the appellant, unless the circumstantial evidence precluded any theory other than his guilt. The evidence which was collected by the Olmsted Police Department were gathered from common access areas. Although, the evidence were recovered from common access areas, (*the apartment and garage*), the State inferred the appellant (Bridges) had committed the crime. The mere presence of the recovered objects did not provide a reasonable basis for the inference. (T. [895, 898], T. 1413-1414, T.957-958, T.1117, T.1125). In order to properly focus on this issue, this Supreme Court must identify the constitutional issue derived by the appellant from these facts. In this murder case, the record shows the court improperly admitted evidence, even though the appellant asserted that all the evidence was collected from a common access living accommodations.

This improper admission of evidence constituted reversible error because it was highly prejudicial to the appellant. Prejudice occurs if there is a reasonable possibility that the error might have contributed to the conviction. See *State v. Cowans* (1967), 10 Ohio St. 2d 96; *State v. Young* (1966), 7 Ohio App. 2D 194. It could be disputed as to whom was the last person to be seen or present in or on the premises of the crime scene investigation. His counsel should have filed a motion to suppress evidence and all inconsistent witness statements. At a suppression hearing, the trial court acts as the trier of fact and must weigh the evidence and judge the credibility of the witnesses. Given the state of the record, there is reasonable probability that the outcome of the trial would have been different in the absence of the State's effort to portray Bridges as the murderer in this case.

The United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects a defendant in a criminal case against a conviction " \* \* \* except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re *Winship* (1970), 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368, 375. It is also an elementary principle of law that when reviewing a criminal conviction, " \* \* \* [t]his court's examination of the record at trial is limited to a determination of whether there was evidence presented, 'which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.' \* \* \*

**The question when reviewing this case is whether there was substantial evidence to convict the appellant?** This Supreme Court of Ohio should examine the record with a view of determining whether the proper rules as to the weight of the evidence and degree of proof have been applied.

"The appellant's right to due process under the Fourteenth Amendment to the United States Constitution was violated when the state was permitted to convict him upon a standard of proof below the required standard of proof beyond a reasonable doubt." In this present case, the record should be carefully examined in order to determine whether the evidence was sufficient and probative to support a finding of guilt beyond a reasonable doubt. The appellant argues that "the cumulative effect of all the errors denied appellant a fair trial in violation of his constitutional right to due process of law." Specifically, appellant argues that "there is no overwhelming evidence of guilt," and the multiple errors committed require reversal. Under the doctrine of cumulative error, "a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal." *State v. Garner* (1995), 74 Ohio St.3d 49, 64, 1995 Ohio 168, 656 N.E.2d 623. See, also, *State v. DeMarco* (1987), 31 Ohio St.3d 191, 31 Ohio B. 390, 509 N.E.2d 1256.

**The appellant was deprived his right to a fair trial and due process under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution when he was convicted of Tampering with Evidence pursuant to O.R.C. §2921.12.**

The third count of the indictment charges that appellant, knowing an official investigation was in progress violated R. C. §2921.12- tampering with evidence. The State's brief contains myriad vague and unsupported claims of tampering with evidence. Appellant contends that several statements made by the State's witnesses referred to questionable evidence. This questionable evidence was presented before the jury as credible only to infer the appellant as guilty. **The record**; (1) State's witness Quinones, testified the the appellant

(Bridges) was standing in the cold weather wearing a T-shirt burning some carpet padding and jean material. (T.1122) (2) He also stated, he believed that someone had attempted to clean the floor, implying Bridges. (T.1125) and (3) Quinones also believed that a number of items from the apartment were missing, including towels, bedding and a rug. (T.1127) (4)

Justice Boyle concurring, at ¶41 David Roose, a detective for the city of Euclid, testified that he specializes in digital evidence. Detective Roose testified that he examined Kings cell phone. He obtained the photo off of Kings phone that King took of Bridges standing by the fire pit. The date of the photo was January 5<sup>th</sup>,2013, and the time-stamp was 15:27 hours and 45 seconds. Detective Roose explained that the date and time may not be accurate because there are many variables that can affect time, including user modification. Detective Roose opined, however, that he did not think that this cell phone had been modified by the user. Detective Roose also verified that King had taken random photos that weekend as he had testified to:

¶38 King testified that on January 5<sup>th</sup>, 2013, he was living at Irene's house. He recalled leaving Irene's house with Quinones that morning. King said that Quinones told him that he had to pay some utility bills and check on his dog at his apartment in Olmsted township. King said that they arrived at Quinones apartment around 12:00pm. He explained that when they pulled in the driveway, they saw Bridges standing outside next to a fire in a T-shirt. He thought that Bridges must be crazy because it was 19 degrees outside, with a "20 knot wind". King said that he did not get out of the car, but as soon as the door opened, he could smell "burning tires" or plastic, "not wood".

¶39 King saw Quinones go inside of his apartment. King said that Quinones came out seven or eight minutes later, looking pale as a ghost. Quinones immediately told King what he saw. King stated that he took the photo of Bridges standing by the fire pit after

Quinones came back to the car and told him what he saw in his apartment, but King said that he had been taking random photos with his cell phone that weekend because he discovered a new app on his phone.

{¶35} Irene testified that she recalled the weekend of January 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup>, 2013, because Quinone's sister celebrated her birthday and Irene remembered that they could not go to the party because Quinones had his daughter that weekend. She said that they played cards until 1:00AM on Friday night. On Saturday, January 5<sup>th</sup>, 2013, she recalled Quinones and King leaving sometime between 11:00AM and 1:00PM.

{¶36} Candice Perachhio testified that she used to date Irene's son. Perachhio stated that she dated Irene's son for about two-and-a-half years, but she had not spoken to him or Irene since they broke up. Perachhio recalled the night of January 4<sup>th</sup>, 2013 and the morning of January 5<sup>th</sup>, 2013. She essentially corroborated Quinones and Irene's testimony.

The sufficiency, of course, is a term of art meaning "The legal standard applied to determine whether a case is legally sufficient to support the jury verdict as a matter of the law" *State v. Thompkins* (1997) 78 Ohio st.3d 380, 1997 Ohio 52, 678 N.E 2d 541. Sufficiency of evidence is determined as a question of law. *State v. Robinson* (1955), 162 Ohio st. 486, 124 N.E 2d 541. The Eighth Appellate District Court did not consider the uncertainties of the evidence presented. Again, most of the evidence presented, was not certified or scientifically reliable, and records which was called reliable was not circumstantial.

It was mere speculations as noted in the prior statements. The designing judges, Boyle A.J., Celebrezze, J., and Jones, J of the Eighth Appellate Court district, said the state provided corroborating evidence for all testimony that was presented. It appears all of the statements are vague and incomplete, but all of the statements and evidence was confusing and fragmented that was presented to the jury in trial court.

Kings view on the weather is unsupported and no corroboration with his statement saying he thought Bridges was crazy for "**standing in the 19 degrees, with a 20 knot wind**".  
(Is this normal everyday language for the average citizen?)

Where only circumstantial evidence connects an accused either with the preparation of an alleged false record or with having presented such record to a grand jury with the purpose of corrupting the outcome of its investigation, in violation of R. C. 2921.12, and the record having been physically prepared and presented to the grand jury by another, such circumstantial evidence must be irreconcilable with any reasonable theory of the accused's innocence in order to support a finding of guilt. ( *State v. Kulig*, 37 Ohio St. 2d 157, approved and followed.) Applying the test set forth in the syllabus of *State v. Kulig*, concluded that only circumstantial evidence had been adduced by the prosecution, none of which could be considered to be inconsistent or irreconcilable with any reasonable theory of appellant's innocence on the charge of tampering with evidence; and thus appellant's trial counsel Rule 29 Motion for Acquittal should have been granted by the trial court.

The State failed to introduce sufficient evidence to prove all the elements of tampering with evidence pursuant to O.R.C. §2921.12. As a result the appellant was deprived of his right to due process of law under the Fourteenth Amendment of the United States Constitution." The Ohio Constitution, article I, section 16 protects citizens from deprivation of property without due process of law.

The jury presumed the mens rea element from the predicate facts. The appellant's right to due process was violated when the jury was instructed that the appellant purpose to discard evidence was presumed from the predicate facts of the offense. In the present case, "a serious lack of evidence, direct or circumstantial" was found. An examination of the record that the evidence produced as to count three in the indictment fails to attain "that high degree

of probative force and certainty which the law demands to support a conviction."

The trial court violated the appellant's right to compulsory process under the Sixth and Fourteenth Amendments to the United States Constitution when it excluded evidence that tended to show that someone other than him being the perpetrator in this trial felony murder. Trial. The exclusion of such evidence also violated his right to due process. Defense Counsel's actions and omissions regarding the state accusation the appellant **Tampering with the evidence at trial**, deprived him of the effective assistance of trial counsel as guaranteed by the Sixth, Amendment to the United States Constitution and Article I, §§10 and 16 of the Ohio Constitution.

**The appellant was deprived Due Process Clause of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution when he was convicted of Offenses Against a Human Corps pursuant to O.R.C. §2927.01(B).**

The appellant argues that R.C. 2927.01 is unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution in that it fails to set forth an ascertainable standard for determining the conduct it seeks to prohibit. Specifically, appellant argues that the language "outrage reasonable family sensibilities" and "outrage reasonable community sensibilities" are not ascertainable standards of guilt. The appellant contends that the trial court should have instructed the jury on abuse of a corpse under R.C. 2927.01(B).

**Abuse of a human corpse, in violation of R.C. 2927.01(B)**, states that no one shall treat a human corpse in a way that would outrage reasonable community sensibilities.

A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. On review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but

whether, if believed, the evidence against a defendant would support a conviction!

The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. A criminal statute will be held void for vagueness under the Due Process Clause of the Fourteenth Amendment if it does not contain "ascertainable standards of guilt." *State v. Young* (1980), 62 Ohio St.2d 370, 16 O.O.3d 416, 406 N.E.2d 499. The standard applied in determining if a statute is vague requires review of the challenged statute to ascertain if its terms are sufficiently explicit so as to inform those subject to it what conduct will render them liable to its penalties. *Young, supra*, citing *Connally v. General Constr. Co.* (1926), 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322. "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. \* \* \*" (Citations omitted.) *Connally*, 269 U.S. at 391, 46 S. Ct. at 127, 70 L. Ed. at 328. The State did not provided overwhelming evidence that appellant was guilty of abuse of a human corpse, one of the charges for which he was convicted. In fact, Dr. Wiens testified that the condition of the body was the result of being in the water for at least several weeks and extensive post-mortem animal activity rather than the conduct of the person that disposed of it in the lake. (T. 738-739, 743, 747-748, 751, 755, 759-762, 772).

"The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship* (1970), 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368, 375; *State v. Wilson* (1996), 74 Ohio St. 3d 381, 393, {79 Ohio St. 3d 196} 659 N.E.2d 292, 306; *State v. Jenks* (1991), 61 Ohio St. 3d 259, 263, 574 N.E.2d 492, 496.

Treating a human corpse in a way that would outrage reasonable community sensibilities is the essential element of R.C. 2927.01(B). The state did not prove beyond a reasonable doubt that the appellant was found to have any contact with the corpse whatsoever. Accordingly, the judgment of the court of appeals must be reversed and remanded to the trial court for further proceedings.

### **Conclusion**

In short, this court must grant a stay to halt appellant from being detained when actual innocence is being asserted. Appellant has inserted constitutional case law mandates to reserve and preserve all claims under a Federal Constitution setting.(as asserted in appellants Memorandum in support of Jurisdiction) This stay request is uttered to include exhibits that will indeed be a game changer that warrants a new trial at the very least.

IN THE THE SUPREME COURT OF OHIO

C. A. No. 2015-0718

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Motion for Immediate Stay While Case No. CA-103090 and Case No. CA-102930 in the Cuyahoga County Eighth District Court of Appeals is still pending for decision and judgment pursuant to 70.1 a(b) **(ACTUAL INNOCENCE NOTICE)**, by Appellant / Andrey L. Bridges has been sent by U.S. Mail, first-class postage prepaid, to Cuyahoga County Prosecutor

T. Allan Regas (0067336)  
Assistant Prosecuting Attorney  
Cuyahoga County Prosecutor  
The Justice Center, 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7800

Counsel for Plaintiff-Appellee:

on this ~~29~~<sup>20</sup> day of July 2015.

Respectfully submitted,

  
Defendant-Appellant, pro se

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Nailah K. Byrd, Clerk of Courts

STATE OF OHIO

Appellee

COA NO.  
100805

LOWER COURT NO.  
CR-13-574201-A

-vs-

COMMON PLEAS COURT

ANDREY BRIDGES

Appellant

MOTION NO. 479829

Date 04/14/15

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Journal Entry

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Motion by appellant, pro se, for reopening is denied.

FILED AND JOURNALIZED  
PER APP.R. 22(C)

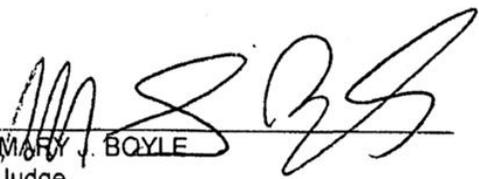
APR 14 2015

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By M. Jacobs Deputy

NOTICE MAILED TO COURSEL  
FOR ALL PARTIES-COSTS TAXED

Adm. Judge, FRANK D. CELEBREZZE, JR.,  
Concurs

Judge LARRY A. JONES, SR., Concurs

  
MARY J. BOYLE  
Judge

CA13100805

88801866



# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 100805

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**ANDREY BRIDGES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
APPLICATION DENIED**

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Cuyahoga County Court of Common Pleas  
Case No. CR-13-574201-A  
Application for Reopening  
Motion No. 479829

**RELEASE DATE:** April 14, 2015

NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-COSTS TAXED

**FOR APPELLANT**

Andrey L. Bridges, pro se  
Inmate No. 650-493  
P.O. Box 8000  
Lake Erie Correctional Institution  
Conneaut, Ohio 44030

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor  
By: John Patrick Colan  
    Brian R. Radigan  
    Brett Hammond  
Assistant County Prosecutors  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Andrey Bridges has filed a timely application for reopening pursuant to App.R. 26(B) relating to *State v. Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, which affirmed his convictions for murder, felonious assault, tampering with evidence, and abuse of a corpse.<sup>1</sup> The state has opposed the application for reopening, and Bridges has filed a reply brief. For the following reasons, we deny the application for reopening.

{¶2} In order to establish a claim of ineffective assistance of appellate counsel, Bridges must demonstrate that appellate counsel's performance was deficient and that, but for the deficient performance, the result of his appeal would have been different. *State v. Reed*, 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. Specifically, Bridges must establish that "there is a genuine issue as to whether he was deprived of the effective assistance of counsel on appeal." App.R. 26(B)(5).

{¶3} In *State v. Smith*, 95 Ohio St.3d 127, 2002-Ohio-1753, 766 N.E.2d 588, the Supreme Court of Ohio held that:

Moreover, to justify reopening his appeal, [applicant] "bears the burden of establishing that there was a 'genuine issue' as to whether he has a 'colorable claim' of ineffective assistance of counsel on appeal." *State v. Spivey*, 84 Ohio St.3d at 25, 1998-Ohio-704, 701 N.E.2d 696.

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<sup>1</sup>The convictions for murder and felonious assault were merged as being allied offenses of similar import.

*Smith, supra*, at 7.

{¶4} In addition, the Supreme Court of Ohio, in *State v. Spivey*, 84 Ohio St.3d 24, 1998-Ohio-704, 701 N.E.2d 696, held that:

In *State v. Reed* (1996), 74 Ohio St.3d 534, 535, 1996 Ohio 21, 660 N.E.2d 456, 458, we held that the two prong analysis found in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 674, is the appropriate standard to assess a defense request for reopening under App.R. 26(B)(5). [Applicant] must prove that his counsel were deficient for failing to raise the issues he now presents, as well as showing that had he presented those claims on appeal, there was a "reasonable probability" that he would have been successful. Thus [applicant] bears the burden of establishing that there was a "genuine issue" as to whether he has a "colorable claim" of ineffective assistance of counsel on appeal.

*Id.*

{¶5} It is also well settled that appellate counsel is not required to raise and argue assignments of error that are meritless. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal. *Jones, supra*, at 752; *State v. Gumm*, 73 Ohio St.3d 413, 1995-Ohio-24, 653 N.E.2d 253; *State v. Campbell*, 69 Ohio St.3d 38, 1994-Ohio-492, 630 N.E.2d 339.

{¶6} In *Strickland*, the United States Supreme Court also stated that a court's scrutiny of an attorney's work must be deferential. The court further stated that it is too tempting for a defendant-appellant to second-guess his attorney after conviction and appeal and that it would be all too easy for a court

to conclude that a specific act or omission was deficient, especially when examining the matter in hindsight. Accordingly, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* at 689. Finally, the United States Supreme Court has firmly established that appellate counsel possesses the sound discretion to decide which issues are the most fruitful arguments on appeal. Appellate counsel possesses the sound discretion to winnow out weaker arguments on appeal and to focus on one central issue or at most a few key issues. *Jones, supra*, at 752.

{¶7} Bridges's application sets forth four assigned errors in which he alleges that his appellate counsel was ineffective. Under the first assigned error in his application, Bridges simply summarizes the three assigned errors that follow it, which does not satisfy the burden for reopening. *See State v. Reeves*, 8th Dist. Cuyahoga No. 100560, 2015-Ohio-299, ¶ 6 (the failure to present any argument in support of an assigned error is insufficient to meet the burden of proving that appellate counsel was ineffective). In his reply brief, Bridges similarly sets forth numerous generalized ways in which he believes his appellate counsel was ineffective in connection with his first assigned error; however, he does not develop any arguments as to how he was prejudiced by these alleged deficiencies. For example, he contends his appellate counsel

should have highlighted inconsistencies in the statements Quinones made to police compared to his trial testimony. Yet, appellate counsel expressly argued that the convictions were against the manifest weight of the evidence because Quinones's testimony was not credible. This court reviewed the entire record, including the credibility of Quinones's testimony, and found that the circumstantial evidence against Bridges was overwhelming. Bridges did not point to any specific inconsistencies that he believes should have been highlighted, and he has not explained how the outcome of the decision could have been different where the entire record was already considered by this court. *Bridges*, 8th Dist. Cuyahoga No. 100805, 2014-Ohio-4570, ¶ 83.

{¶8} Bridges claims his appellate counsel should have also raised the following arguments on appeal: that there was an actual conflict between himself and his trial counsel, that trial counsel failed to secure needed experts, that trial counsel failed to object to improper and prejudicial prosecutorial remarks, that trial counsel failed to subpoena his son to testify and that counsel should have moved the court to issue a gag order "to prevent the newspaper from reporting the proceedings and/or criminal background of Bridges to the public." Bridges has not cited to any specific prosecutorial remarks he believes were improper or prejudicial. Further, many of the foregoing arguments require reference to material that is outside the trial court record and would be improper for appellate counsel to raise in the direct appeal.

{¶9} It is well settled that “appellate review is strictly limited to the record.” *State v. Ellis*, 8th Dist. Cuyahoga No. 90844, 2009-Ohio-4359, ¶ 6, citing *The Warder, Bushnell & Glessner Co. v. Jacobs*, 58 Ohio St. 77, 50 N.E. 97 (1898) (other citations omitted); *State v. Corbin*, 8th Dist. Cuyahoga No. 82266, 2005-Ohio-4119, ¶ 7. A reviewing court cannot add material to the appellate record and then decide the appeal on the basis of the new material. *Id.*, citing *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). “Nor can the effectiveness of appellate counsel be judged by adding new matter to the record and then arguing that counsel should have raised these new issues revealed by the newly added material.” *State v. Moore*, 93 Ohio St.3d 649, 650, 2001-Ohio-189, 758 N.E.2d 1130.

{¶10} Bridges has also failed to demonstrate any prejudice stemming from the alleged deficiencies. The first assigned error does not provide grounds for reopening the appeal pursuant to App.R. 26(B).

{¶11} In his second assignment of error, Bridges maintains that his appellate counsel should have asserted that the trial court erred by allowing media coverage of his case or his counsel should have moved for a change in venue. Bridges generally asserts that the publicity deprived him of an impartial jury but he has not identified any factual basis in the record that would support this claim. It is within the court’s discretion whether to grant or deny a motion for change of venue. *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751,

23 N.E.3d 1096, ¶ 91. Bridges cannot establish that the trial court would have granted a motion for change of venue even if trial counsel had filed one. In order “to prove that a trial court erred by denying a change of venue, a defendant must show that at least one prospective juror was actually biased.” *Id.* at ¶ 95. Bridges has not identified any specific juror that he claims was actually biased. “[I]n certain rare cases, pretrial publicity is so damaging that courts must presume prejudice even without a showing of actual bias.” *Id.* at ¶ 100. A claim of presumed prejudice requires Bridges to make a clear and manifest showing of pervasive and prejudicial pretrial publicity. *Id.* at ¶ 101. There is no reasonable probability that appellate counsel would have prevailed on a claim of presumed prejudice based on this record. During voir dire, some jurors indicated that they had been exposed to some media coverage of the case. Each juror was separately questioned about their media exposure. In most instances, the juror’s knowledge was very limited and consisted only of hearing that the body of a transgender individual had been found in a pond in Olmsted Township. None of the jurors reported having any knowledge of Bridges or his criminal history. None of the jurors had formed any opinion regarding Bridges’s culpability. All of the jurors indicated that they could be fair and impartial and that they could set aside anything that they had learned from the pretrial publicity.

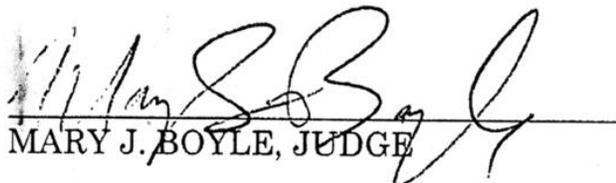
{¶12} There is no indication that Bridges received an unfair trial based on publicity. The second assigned error does not provide grounds for reopening the appeal.

{¶13} In his third assigned error, Bridges maintains that appellate counsel should have argued that trial counsel was ineffective in the following ways: failure to investigate the case, failure to consult with the client to prepare the case, failure to file a suppression motion and a "motion for in camera inspection," failure to move for a private investigator prior to trial, and failure to file a notice of alibi. In his reply brief, Bridges contends that his trial counsel's alleged failure to timely investigate the case and to present relevant evidence affected a substantial right and prejudiced him. Appellate counsel could not have successfully raised any of these arguments in the direct appeal because they would require speculation or consideration of evidence that is outside of the record. *Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500; *State v. Bays*, 87 Ohio St.3d 15, 28, 1999-Ohio-216, 716 N.E.2d 1126 (prejudice from counsel's failure to employ investigative services is speculative where the record does not disclose what investigations trial counsel had performed or what information an investigator might have "turned up or that defense counsel in fact failed to obtain"). Accordingly, the third assigned error does not establish a colorable claim of ineffective assistance of appellate counsel for purposes of reopening the appeal.

{¶14} In his application, Bridges appears to be arguing under his fourth assigned error that his appellate counsel should have presented an ineffective assistance of trial counsel argument based on the failure to file a motion to suppress. Bridges failed in his application to identify the specific testimony or evidence that he believes was improperly admitted. In his reply brief, Bridges refers to "the admission of the alleged statements of Jason Quinones through the testimony of an investigating officer violated his right to confront witnesses against him \* \* \*." However, Quinones was subject to cross-examination at trial. In any case, Bridges has failed to direct this court to any portion of the record or trial where he contends his trial counsel should have objected to the admission of evidence or where any specific testimony or evidence was improperly introduced to his prejudice. Accordingly, he has failed to demonstrate any genuine issue of ineffective assistance of appellate counsel based on the fourth assigned error.

{¶15} Bridges has not met the standard for reopening pursuant to App.R. 26(B).

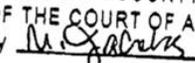
{¶16} Accordingly, his application for reopening is denied.

  
MARY J. BOYLE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
LARRY A. JONES, SR., J., CONCUR

FILED AND JOURNALIZED  
PER APP.R. 22(C)

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