

RULE 33.1 New Trial Based on New Evidence that Produces a Reasonable Likelihood of Acquittal.

- (A) Grounds. A new trial may be granted on motion of the defendant if the defendant produces relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case, which, were it to be considered at a new trial, would result in a reasonable likelihood of acquittal.
- (B) Timing. There is no time limit for a motion under this section, and it may be considered by the court at any time.
- (C) Procedure.
 - (1) The motion shall set forth specific, nonconclusory facts: (a) identifying the specific new evidence; (b) explaining how that evidence demonstrates entitlement to relief under section (A); (c) explaining why the new evidence was not proffered at trial or any pretrial proceedings; and (d) attaching supporting materials.
 - (2) Unless, after reviewing the petition, the supporting materials, and all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript, the court determines that the defendant's motion is patently frivolous on its face (as defined in subsection (4) of this section), the court may appoint counsel for an indigent movant, and the parties shall be entitled to invoke the processes of discovery available under the Ohio Rules of Criminal Procedure.
 - (3) Once the briefing and any discovery is concluded, the court shall promptly set the matter for hearing.
 - (4) The court shall hold an evidentiary hearing on a motion under this section unless the defendant's motion is patently frivolous on its face. "Patently frivolous" is defined as offering no new evidence which, even if true, would satisfy the standard in section (A).
- (D) Types of evidence to be considered under this Rule include, but are not limited to, scientific or expert evidence that discredits the evidence relied on by the State at trial or demonstrates a shift in a field of scientific or expert knowledge; recantation evidence; a witness who did not testify at trial; DNA evidence; or evidence that was not disclosed and whose disclosure would be required under *Brady v. Maryland*, 373 U.S. 83 (1963).
- (E) The court shall issue written findings of fact and conclusions of law in disposing all motions under this rule.
- (F) Appeal. An order entered on the motion is a final order for purposes of appeal.