

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

|                      |   |                        |
|----------------------|---|------------------------|
| State of Ohio,       | : |                        |
|                      | : |                        |
| Plaintiff-Appellee,  | : |                        |
|                      | : | No. 25AP-964           |
| v.                   | : | (C.P.C. No. 03CR-7014) |
|                      | : |                        |
| Marcus D. White,     | : | (ACCELERATED CALENDAR) |
|                      | : |                        |
| Defendant-Appellant. | : |                        |

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D E C I S I O N

Rendered on September 24, 2026

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**On brief:** *[D. Andrew Wilson]*, Attorney General, and  
*Andrea K. Boyd*, for appellee.

**On brief:** *Marcus D. White*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

LELAND, J.

{¶ 1} Defendant-appellant, Marcus D. White, appeals the decision of the Franklin County Court of Common Pleas denying his motion for a new trial. For the following reasons, we affirm.

**I. Facts and Procedural History**

{¶ 2} On October 12, 2003, White shot T.S., his estranged wife, and D.G., his mother-in-law, during an argument. T.S. survived but D.G. died as a result of her injuries. On October 22, 2003, White was indicted for the shooting, and, on August 4, 2005, he was convicted of murder and felonious assault and sentenced to an aggregate term of 28 years to life imprisonment. On direct appeal, we remanded the case for sentencing errors, and,

on October 24, 2006, the trial court imposed a correct sentence of 25 years to life imprisonment.

{¶ 3} Over the years, White has challenged his convictions through multiple unsuccessful actions in state and federal courts. On June 16, 2023, White filed a motion for leave to file a motion for a new trial based on his recent discovery that two detectives were charged in 2006 with felony theft offenses for falsifying time sheets. Columbus Division of Police Detective Brian Carney was the lead detective assigned to White's case, but Columbus Division of Police Detective Christopher Rond had no involvement in his case. Both detectives pled guilty to misdemeanor falsification and completed the diversion program.

{¶ 4} The trial court sidestepped the determination of whether to grant White's motion for leave to file the motion for a new trial and instead jumped straight to the merits and concluded that the newly discovered evidence did not disclose a strong probability of a different outcome and denied the motion without an evidentiary hearing on February 9, 2024. On appeal, this court determined that the trial court erred by not applying the proper standard to White's motion for leave to file a motion for a new trial and remanded the matter to the trial court.

{¶ 5} On July 15, 2025, the trial court granted White leave to file a motion for a new trial, which he filed on July 17, 2025. On November 19, 2025, the trial court denied the motion for a new trial without an evidentiary hearing. White now brings the instant appeal.

## **II. Assignments of Error**

{¶ 6} White appeals and assigns the following assignments of error for our review:

[I.] The Trial Court abuse its discretion by denying the Motion for New Trial on the merits, after finding he was unavoidably prevented from discovering Lead Det. B. Carney's/C. Rond's indictment & crim. plea, i.e. (theft in office, tampering with evidence & falsifying documents), without an evidentiary hearing, to present evidence of how the criminal misconduct affected his ability to present a complete and full defense of self-defense/receive a fair trial, violating Appellant's right due process of law guaranteed by the U.S. & Ohio Const., Crim. R. 33(A), *Brady v. Maryland*, 373 U.S. 83, *Kyles v. Whitley*, 514 U.S. 419 *State v. Bethel*, 167 Ohio St. 3d 362 & *State v. Hatton*, 169 Ohio St. 3d 446?

[II.] The Trial Court Abused its Discretion in denying the Motion for New Trial on the merits, where the Court misapplied the *Petro Standard*, misconstrued materiality, and erroneously dismissed Newly Discovered Evidence (police misconduct/guilty plea) as “unrelated misconduct”, in violation of *Brady v. Maryland*, 373 U.S. 83, *Kyles v. Whitley*, 514 U.S. 419 *State v. Bethel*, 167 Ohio St. 3d 362 & *State v. Hatton*, 169 Ohio St. 3d 446?

(Sic passim.)

### III. Discussion

{¶ 7} A trial court’s ruling on a motion for a new trial is reviewed for an abuse of discretion. *State v. Moncrief*, 2013-Ohio-4571 (10th Dist.). The term “abuse of discretion” is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record, and may be found when the trial court “applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.” *State v. Howard*, 2024-Ohio-5785, ¶ 14 (10th Dist.). “Although an abuse of discretion is typically defined as an unreasonable, arbitrary, or unconscionable decision, no court has the authority, within its discretion, to commit an error of law,” and questions of law are reviewed de novo. *State v. Hoover-Moore*, 2015-Ohio-4863, ¶ 14 (10th Dist.). New trials should not be granted lightly. *State v. Dixon*, 2018-Ohio-4841 (10th Dist.).

{¶ 8} We shall address White’s assignments of error in reverse order. In his second assignment of error, White argued that the trial court erred in denying his motion for a new trial on the merits. White alleged the trial court misapplied the standards articulated in *State v. Petro*, 148 Ohio St. 505 (1947), misconstrued the concept of materiality, and erroneously mischaracterized newly discovered evidence as unrelated conduct.

{¶ 9} Crim.R. 33(A) provides that “[a] new trial may be granted on motion of the defendant for any of the following causes affecting materially the defendant’s substantial rights: . . . (2) misconduct of the jury, prosecuting attorney, or the witnesses for the state; . . . (6) [w]hen new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial.” A new trial is allowed where the new evidence: “ ‘(1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to

the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence.’ ” *State v. Stewart*, 2023-Ohio-1150, ¶ 13 (10th Dist.), quoting *Petro* at paragraph one of the syllabus.

{¶ 10} When a motion for a new trial is made on grounds of newly discovered evidence, the motion must be filed within 120 days of the verdict. Crim.R. 33(B). If a defendant files the motion outside the timeframe, as is the case here, a two-step procedure must be followed. *State v. Newton*, 2015-Ohio-1972 (10th Dist.). A defendant must first seek leave of court to file a delayed motion for a new trial and “demonstrate by clear and convincing proof that he or she was unavoidably prevented from discovering the evidence upon which the motion is based within the 120-day timeframe.” *State v. Lundy*, 2020-Ohio-1585, ¶ 11 (10th Dist.). “When a defendant seeks leave to file a motion for a new trial under Crim.R. 33(B), the trial court may not consider the merits of the proposed motion for a new trial until after it grants the motion for leave.” *State v. Hatton*, 2022-Ohio-3991, ¶ 30. Then, if a defendant is able to establish that the delay was unavoidable, the defendant must file the motion for a new trial within seven days of that finding. *State v. Berry*, 2007-Ohio-2244, ¶ 20 (10th Dist.).

{¶ 11} The new evidence must be material to the issues at trial, and not merely cumulative or impeaching. “Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *State v. Banks*, 2005-Ohio-1943, ¶ 18 (10th Dist.). Newly discovered evidence that only has the possibility of changing the result of a trial is not material. *Id.*

{¶ 12} White argues that his motion should have been granted because of the detectives’ criminal investigation and resultant credibility issues. The investigation revealed that the detectives were attending college classes when they should have been investigating homicides. Detective Carney attended at least 10 classes while on duty from January 2003 to August 2005 and received \$7,265 in tuition reimbursement. Detective Carney falsified four tuition reimbursement applications to reflect that the courses did not conflict with his duty hours. Detective Rond attended 18 classes while on duty between January 2002 and June 2005 and received \$10,251 in tuition reimbursement. Detective Rond falsified one reimbursement application. Neither detective testified at trial, although Detective Carney was at the prosecutor’s table during the trial.

{¶ 13} White was indicted in October 2003 and his trial commenced in May 2005. White was convicted in August 2005, but his sentence was not final until corrected in October 2006. White contends without proof that the detectives' conduct was closely related to his case. However, the record reflects the detectives' misconduct did not involve investigating a homicide, handling evidence, or interviewing witnesses, either related to White's case or any other matter.

{¶ 14} The trial court found that White's arguments relied on mere allegations and speculative assertions that were insufficient to establish a reasonable probability of success. *State v. Fulmer*, 2026-Ohio-2143 (3d Dist.). When a defendant's argument relies on a highly speculative chain of events, that evidence is not material and does not create a strong probability that the jury's verdict would change. *State v. Pettaway*, 2020-Ohio-1153 (6th Dist.) (defendant discovered post-trial that a police employee stole cash from the evidence room, and his presumptions that marked money from his case was involved and subsequent extrapolations of the impact of this new evidence on his case does not warrant a new trial). Newly discovered evidence consisting of speculation does "not create a strong possibility of a different outcome at trial." *State v. Jalowiec*, 2015-Ohio-5042, ¶ 45 (9th Dist.). See *State v. Perkins*, 2020-Ohio-2888 (3d Dist.) (motion for new trial denied where a detective who testified in defendant's trial was convicted of tampering with evidence in an unrelated case several years later and the defendant speculated that the detective provided false testimony in the trial).

{¶ 15} The trial court determined that, if known at the time of trial, any information regarding the detectives could only be used to impeach their credibility. *State v. Petrone*, 2014-Ohio-3395, ¶ 75 (5th Dist.) (fact that a crime lab employee who testified regarding ballistics testing of firearm at trial was later disciplined for unrelated activity "is at best merely evidence of impeachment . . . but is not relevant to the jury's finding of guilt"). Newly discovered evidence that merely impeaches is generally insufficient to grant a new trial. *State v. Prater*, 2021-Ohio-3988 (10th Dist.). The trial court found that the evidence was not material and would not disclose a strong probability that the outcome of White's trial would change, even if allowed as impeachment evidence. *State v. Phillips*, 2017-Ohio-8004, ¶ 20 (10th Dist.) (finding that "evidence of their criminal conduct, and its impact on the credibility of their testimony, would not be material to appellant's case," motion for new

trial denied where detectives involved in defendant's case charged with post-trial distribution of drugs and stealing money and property from the execution of search warrants).

{¶ 16} Pursuant to Evid.R. 609, evidence that the detectives were under investigation is inadmissible for impeachment purposes as they had not yet been convicted. *State v. Westbrook*, 2001-Ohio-4268 (10th Dist.). A state witness generally cannot be impeached on cross-examination by merely showing an arrest, investigation, indictment, or pending charge to attack their general character for truthfulness. *State v. James*, 2022-Ohio-3244 (1st Dist.). And even if the evidence were admissible and relevant, we once again note neither detective testified at trial and question how this evidence could be used to impeach.

{¶ 17} Plaintiff-appellee, State of Ohio, presented eyewitness testimony from T.S. that White shot her in the face and then shot her mother at close range. D.G. was not running toward or otherwise threatening White. An off-duty civilian police employee who lived next door was at the scene and her testimony corroborated T.S.'s statements. White testified that he fired his weapon at least four times, and that he shot T.S. and D.G. No other firearm was found at the scene. None of the newly discovered evidence undermined or contradicted this evidence supporting his conviction. The detectives' misconduct is not related to the case and will not change the outcome of the trial. When weighed against credible eyewitness testimony supporting White's conviction, we cannot say that the trial court abused its discretion when it denied his motion for a new trial without an evidentiary hearing.

{¶ 18} White alleged the state's nondisclosure of the detective's conduct violated *Brady v. Maryland*, 373 U.S. 83 (1963). "There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" *State v. Dodson*, 2023-Ohio-701, ¶ 28 (10th Dist.), quoting *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). The defendant has a duty to prove that the state failed to disclose material evidence. *State v. Lett*, 2023-Ohio-2580 (8th Dist.). The "touchstone of materiality is a 'reasonable probability' of a different result[.]" *State v. Young*, 2006-Ohio-1165, ¶ 14 (10th Dist.). The

trial court determined that White did not establish that the state failed to disclose material evidence. Whether withheld evidence is material under *Brady* is a matter of law for which we review de novo. *State v. Simon*, 2024-Ohio-925 (4th Dist.).

{¶ 19} White has offered no proof that the newly discovered evidence was material to the issues and would change the outcome of the trial. The misconduct is simply not relevant to the issues and does not impact any evidence presented at the trial. At best, the newly discovered evidence would have been used solely for impeachment, which will not justify a new trial. White further fails to demonstrate how the new evidence undermined the integrity of his investigation. There is no evidence of falsification, tampering, or improper influence.

{¶ 20} Because White only offers speculation and conjecture, *Brady* is not triggered. “Implicit within the first element of a *Brady* claim is that the evidence allegedly withheld must have actually existed.” *State v. Black*, 2022-Ohio-3119, ¶ 20 (10th Dist.) (unsupported allegations insufficient to demonstrate evidence was withheld). However, all we have here are White’s unsupported allegations and inuendo that the detectives compromised his case. There are only bare assertions. “A *Brady* violation may not rest upon a claim that is ‘purely speculative.’” *State v. Sullivan*, 2014-Ohio-1260, ¶ 20 (10th Dist.).

{¶ 21} White also argued that Detective Carney committed a *Brady* violation by not logging D.G.’s cell phone. White alleged that the cell phone was a key piece of evidence that was never collected and logged into evidence by law enforcement. But this is not new evidence. The state presented cell phone records which reflect a 9-1-1 call was made from the phone. Testimony at trial reflected D.G. had a phone in her hand, and that T.S. eventually recovered the phone. White testified that the cell phone was not inventoried or processed by police. *State v. White*, 2006-Ohio-4226, ¶ 23 (10th Dist.).

{¶ 22} White contends the nondisclosure of the cell phone that he knew about impacted his claim of self-defense, but we disposed of self-defense claims in his direct appeal. No other weapon was found at the scene. There is no *Brady* violation involving the detectives’ misconduct or the cell phone.

{¶ 23} The trial court did not act unreasonably or arbitrarily when it determined that White’s newly discovered evidence failed to satisfy the *Petro* requirements for a new trial.

We find the trial court did not err when it denied White’s motion for a new trial. White’s second assignment of error is overruled.

{¶ 24} White argues in his first assignment of error that the trial court abused its discretion in denying his motion for a new trial without an evidentiary hearing. We disagree and find that the trial court acted within its discretion in determining that it was not necessary to hold a hearing.

{¶ 25} A trial court has the discretion to determine whether to conduct an evidentiary hearing on a motion for a new trial. *Berry*, 2007-Ohio-2244 (10th Dist.). A trial court judge, as the factfinder, is in the best possible position to determine whether guilt or innocence would be likely to be affected by the newly discovered evidence, and the reviewing court must give great deference to that determination. *State v. Hatton*, 2014-Ohio-3601 (4th Dist.).

{¶ 26} An evidentiary hearing is not required where the trial court demonstrates that the motion for a new trial lacks merit. *State v. Harrison*, 2022-Ohio-407 (2d Dist.). The newly discovered evidence “must, at the very least, disclose a strong probability that it will change the result if a new trial is granted,” and if it does not, a court may deny the motion without a hearing. *State v. Starling*, 2002-Ohio-3683, ¶ 13 (10th Dist.). Whether newly discovered evidence establishes a “strong probability” of a different result is a highly fact-specific inquiry committed to the sound discretion of the trial court. *State v. Graggs*, 2015-Ohio-3990, ¶ 12 (10th Dist.).

{¶ 27} We find that the trial court acted within its discretion in denying White’s motion for a new trial without conducting an evidentiary hearing. White’s first assignment of error is overruled.

#### **IV. Conclusion**

{¶ 28} The trial court’s determination was reasonable and a sound exercise of its discretion. Having overruled White’s two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

DORRIAN and EDELSTEIN, JJ., concur.

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