[Cite as *State v. Pulley*, 2026-Ohio-4402.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	C.A. No. 30749
Appellee	:	
	:	Trial Court Case No. 2021 CR 00303
v.	:	
	:	(Criminal Appeal from Common Pleas
CHARLES F. PULLEY	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on November 6, 2026, the judgment of the trial court is reversed, and the matter is remanded for further proceedings consistent with the opinion.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



CHRISTOPHER B. EPLEY, JUDGE

LEWIS, P.J., and HANSEMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30749

CHRISTOPHER BAZELEY, Attorney for Appellant
ANDREW T. FRENCH, Attorney for Appellee

EPLEY, J.

{¶ 1} Charles F. Pulley appeals from a judgment of the Montgomery County Court of Common Pleas, which denied his motion for leave to file a motion for a new trial. For the following reasons, the trial court's judgment is reversed and the matter is remanded for reconsideration of Pulley's motion for leave to file a motion for a new trial using the proper standard.

I. Facts and Procedural History

{¶ 2} On February 4, 2021, Pulley was indicted on two counts of murder, two counts of endangering children, and one count each of felonious assault and involuntary manslaughter. The charges arose from the death of a six-week-old child, A.G., who sustained injuries while Pulley babysat her on August 19 and 20, 2020. When the offenses occurred, Pulley was dating A.G.'s mother; he was not the child's father.

{¶ 3} The matter proceeded to a jury trial in May 2022. Pulley was found guilty of all charges. After merging offenses, the trial court sentenced Pulley to a total of 18 years to life in prison for murder and endangering children. We affirmed Pulley's conviction on direct appeal. *State v. Pulley*, 2023-Ohio-3277 (2d Dist.).

{¶ 4} Approximately two years later, on August 6, 2025, Pulley filed a motion for leave to file a motion for a new trial pursuant to Crim.R. 33(B). He sought to file a motion for a new trial based on prosecutorial misconduct under Crim.R. 33(A)(2). Pulley indicated that the lead prosecutor on his case had been placed on leave for possible criminal activity while

Pulley's case was pending and that the prosecutor was indicted in July 2022. Pulley stated that he did not and could not have learned of the potential charges against the prosecutor until after the indictment was publicized. Pulley further stated that, "[a]fter discovering the evidence, the defendant worked vigorously to obtain information on how it was material to his case."

{¶ 5} Pulley supported his motion with an affidavit that detailed his efforts to obtain information about the prosecutor's personnel file and the Prosecutor's Office's policies regarding the ability of the prosecutor to work while on leave. He did not file a proposed motion for a new trial contemporaneously with the motion for leave.

{¶ 6} The State opposed Pulley's motion. It argued, first, that it was unclear how Pulley's evidence was relevant to the crimes of which he was convicted. Second, the State asserted that there was no evidence to support Pulley's allegations. It argued: "The only evidence available clearly demonstrates that there were no charges filed against former APA Amos until July 2022, at which time he resigned from his position. Until such a time as formal charges were filed, there was nothing improper nor illegal about Amos's prosecution of cases including his prosecution of this Defendant."

{¶ 7} Pulley's reply memorandum reiterated that he was unavoidably prevented from discovering the evidence to support his motion for leave within the 120-day limit (suggesting that he intended to proceed under Crim.R. 33(A)(6) related to newly discovered evidence). He emphasized that the sole question was whether he could file an untimely motion, not whether his motion had merit.

{¶ 8} On December 18, 2025, the trial court denied the motion for leave, citing the reasons set forth by the State in its opposition memorandum. Pulley appeals from the trial court's judgment, raising one assignment of error.

II. Review of Denial of the Motion for Leave

{¶ 9} In his sole assignment of error, Pulley claims that the trial court erred in denying his motion for leave to file a motion for a new trial. He emphasizes that Crim.R. 33 involves a two-step process and that the sole issue before the trial court was whether he had established, by clear and convincing proof, that he was unavoidably prevented from discovering the evidence on which he sought to base his motion for a new trial.

{¶ 10} Motions for a new trial are governed by Crim.R. 33. A new trial may be granted if any of several grounds exist that materially affected the defendant's substantial rights, including (1) "irregularity in the proceedings . . . because of which the defendant was prevented from having a fair trial," (2) misconduct of the prosecutor, jury, or witnesses, (3) accident or surprise which ordinary prudence could not have guarded against, (4) the verdict is contrary to law, (5) error of law occurring at trial, and (6) newly discovered evidence. Crim.R. 33(A).

{¶ 11} Under Crim.R. 33(B), motions for a new trial based on newly discovered evidence must be filed within 120 days of the verdict. When the basis for the new trial is not newly discovered evidence, a motion for new trial must be made within 14 days after the verdict was rendered. Crim.R. 33(B). To file a motion for a new trial after the deadline, the defendant must first file a motion for leave, demonstrating by clear and convincing proof that he or she has been unavoidably prevented from filing the motion in a timely fashion. *State v. Lenoir*, 2015-Ohio-1045, ¶ 14 (2d Dist.); Crim.R. 33(B).

{¶ 12} A defendant is unavoidably prevented from filing a motion for a new trial if the person had no knowledge of the existence of the ground supporting the motion for a new trial and could not have learned of its existence within the time prescribed for filing the motion in the exercise of reasonable diligence. *State v. Wells*, 2025-Ohio-2792, ¶ 12 (2d Dist.).

{¶ 13} Crim.R. 33(B) sets forth a two-step process for filing an untimely motion for a new trial. *State v. McAlpin*, 2026-Ohio-148, ¶ 16; *State v. Hatton*, 2022-Ohio-3991, ¶ 29. The first step is to obtain an order from the trial court allowing the delayed filing. *Id*., citing Crim.R. 33(B). If the trial court grants the motion for leave, the second step is to file the motion for a new trial within seven days of the order allowing the delayed motion. *Id*. at ¶ 18; Crim.R. 33(B).

{¶ 14} "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." *Hatton* at ¶ 30, citing *State v. Bethel*, 2022-Ohio-783, ¶ 41. "The sole question before the trial court when considering whether to grant leave is whether the defendant has established by clear and convincing proof that he [or she] was unavoidably prevented from discovering the evidence on which he [or she] seeks to base the motion for a new trial." *Id*. This comports with the supreme court's instruction that "an untimely motion for new trial based on newly discovered evidence may be filed only after the trial court grants leave to file it." *McAlpin* at ¶ 18; *see also* Crim.R. 33(B).

{¶ 15} We review the trial court's ruling on a motion for leave to file a motion for a new trial for an abuse of discretion. *Hattan* at ¶ 29. The term "abuse of discretion" means that the court's attitude is unreasonable, arbitrary, or unconscionable. *McAlpin* at ¶ 14.

{¶ 16} In this case, the trial court did not address whether Pulley had demonstrated by clear and convincing proof that he was unavoidably prevented from filing a timely motion for a new trial. In adopting the arguments raised by the State, the court denied the motion for leave based on a lack of evidence that Pulley was entitled to a new trial under Crim.R. 33(A). Not only did the trial court fail to follow the two-step process, but it resolved an anticipated motion for a new trial that had not yet been filed.

{¶ 17} In its appellate brief, the State contends that the trial court did not abuse its discretion in denying Pulley's motion for leave. It asserts that the prosecutor's indictment and subsequent resignation did not establish that the prosecutor did anything improper related to Pulley's case and that Pulley had not "identified any link between the prosecutor's indictment or resignation and his [Pulley's] ultimate conviction." The State points to our recent opinion in *State v. Wampler*, 2026-Ohio-2857 (2d Dist.), to support its position.

{¶ 18} In *Wampler*, the defendant filed a motion for leave to file a motion for a new trial 43 years after he was convicted of aggravated murder, rape, abduction, and abuse of a corpse related to the death of a 13-year-old boy in 1982; Wampler was 15 years old when the offenses occurred. In his motion, Wampler asserted that the prosecution had knowingly allowed perjured testimony at his trial, the prosecution had withheld exculpatory evidence, the evidence was insufficient to convict him, his trial counsel had provided ineffective assistance, and the trial judge was biased in favor of the prosecutor. Wampler attached several exhibits to support his contentions. These included documents from 1984 related to the indictment and conviction of the prosecutor, Robert Head, for theft in office and the subsequent disciplinary proceedings before the Ohio Supreme Court involving Head.

{¶ 19} The trial court denied Wampler's motion for leave because Wampler had failed to demonstrate by clear and convincing evidence that he was unavoidably prevented from discovering the new evidence within the time provided by Crim.R. 33(B). The court also found that Wampler had "not pointed to any evidence from his trial or post-conviction proceedings to support a finding of judicial or prosecutorial bias, nor [had] he complied with the mandates of Crim.R. 33(C), which requires that allegations of prosecutorial misconduct be supported by affidavit(s)." *Wampler* at ¶ 7, quoting Decision (Dec. 18, 2025), p. 9.

{¶ 20} Upon review, we noted that Wampler had failed to explain why he could not have obtained much of the information he relied upon within the time required by Crim.R. 33(B) (although only some of Wampler's arguments related to newly discovered evidence under Crim.R. 33(A)(6), we referred to the 120-day time limit for all of his arguments). As for the documents related to Head's conviction for theft in office, however, we agreed with Wampler that he could not have discovered the documents within the time limitation because the documents did not exist and did not become public information until well after the Crim.R. 33(B) time limit had expired. *Id*. at ¶ 17. We nevertheless found no abuse of discretion in the trial court's denial of leave, stating:

> The fact that the prosecutor at Wampler's trial was later indicted and convicted for theft in office does not establish that the prosecutor did anything related to Wampler's case that supports the granting of a new trial. In short, Wampler has identified no link between Head's conviction for an unrelated crime and Wampler's ultimate convictions. The documents about Head's unrelated criminal conviction and subsequent attorney disciplinary proceedings are immaterial to Head's motion for leave. *See State v. Bethel*, 2022-Ohio-783, ¶ 59 (noting that a hearing on a motion for a new trial would be an exercise in futility where the evidence appellant was unavoidably prevented from discovering was immaterial). Moreover, Wampler conceded in his reply appellate brief that the prosecutorial misconduct that occurred "is clearly contained in the court records." Appellant's Reply Brief, p. 3. Therefore, Wampler was not unavoidably prevented from discovering the alleged evidence of prosecutorial misconduct within 120 days of the jury's verdicts. And because the prosecutorial misconduct that allegedly occurred "is clearly

> contained in the court records," Wampler should have raised his argument regarding prosecutorial misconduct on direct appeal. Res judicata precludes him from raising an argument in a motion for a new trial that he could have raised in his prior, direct appeal. *State v. Trigg*, 2026-Ohio-585, ¶ 24 (2d Dist.).

Wampler, 2026-Ohio-2857, at ¶ 17 (2d Dist.).

{¶ 21} For several reasons, we decline to follow *Wampler*'s analysis regarding the prosecutor's criminal conduct and subsequent disciplinary proceedings. First, Wampler conceded that the prosecutorial misconduct that had occurred was reflected in the record. Our holding, therefore, was based on res judicata. Consequently, our statement that the documents about Head's unrelated criminal conviction and disciplinary proceedings were immaterial to the motion for leave, as well as our reliance on *Bethel*, was arguably dicta.

{¶ 22} More fundamentally, the Ohio Supreme Court has emphasized the two-step process for motions for leave to file a motion for a new trial. *Hatton*, *McAlpin*, and *Bethel* unequivocably state that the merits of a motion for a new trial should not be considered when ruling on a motion for leave to file an untimely new-trial motion.

{¶ 23} *Bethel* was procedurally dissimilar from the circumstances before us and does not support varying from that instruction in this case. In *Bethel*, the defendant filed a combined successive petition for post-conviction relief and an untimely motion for a new trial, raising a *Brady* violation by the State. He separately sought leave to file the untimely new-trial motion. On review of the denial of the petition for post-conviction relief, the supreme court concluded that the *Brady* claim lacked merit. *Bethel* at ¶ 31-40. As to Bethel's untimely motion for a new trial, the supreme court held that "[t]he trial court should not have purported to deny Bethel's new-trial motion on its merits, because the court never permitted Bethel to file that motion." *Id*. at ¶ 41. It further concluded that the trial court had erred in denying the

motion for leave, because Bethel had made a prima facie claim that he was unavoidably prevented from discovering the withheld information and there was no requirement that the motion be filed within a reasonable time. *Id*. at ¶ 58-59. Nevertheless, having already concluded that the *Brady* claim lacked merit, the Court determined that it made little sense to remand for a futile hearing on the motion for a new trial.

{¶ 24} Here, Pulley did not file a petition for post-conviction relief raising the effect of Amos's alleged misconduct. Moreover, consistent with the dictates of *McAlpin* and Crim.R. 33(B), Pulley had yet filed a motion for a new trial. At the motion-for-leave stage, Pulley was not required to make the merits showing that his evidence would probably change the outcome of his trial; "that requirement comes only if the motion for leave is granted." *State v. Grad*, 2024-Ohio-5710, ¶ 89 (Deters, J., dissenting), citing *Hatton* at ¶ 28 and *Bethel* at ¶ 41. Thus, when ruling on Pulley's motion for leave, the trial court should not have considered the materiality of Amos's handling of Pulley's case. Whether Amos "did anything related to Pulley's case that would entitle Pulley to a new trial" was a matter for the trial court to resolve only if it granted Pulley's motion for leave to file the motion for a new trial.

{¶ 25} Because the trial court improperly considered the merits of Pulley's potential motion for a new trial in ruling on his motion for leave to file a motion for a new trial, Pulley's assignment of error is sustained.

III. Conclusion

{¶ 26} The trial court's judgment is reversed, and the matter is remanded to the trial court to reconsider Pulley's motion for leave to file a motion for a new trial using the proper standard.

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LEWIS, P.J., and HANSEMAN, J., concur.