[Cite as *State v. Morgan*, 2026-Ohio-2303.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JOHN EUGENE MORGAN,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 25 MA 0082

Combined Application for Reconsideration, Alternative Application for En Banc Consideration & Alternative Motion to Certify Conflict

BEFORE:
Cheryl L. Waite, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Denied.

Atty. Lynn Maro, Mahoning County Prosecutor, and *Atty. Kristie M. Weibling*, Assistant Prosecutor, for Plaintiff-Appellee

Atty. Rhys Brendan Cartwright-Jones, for Defendant-Appellant.

Dated: June 11, 2026

PER CURIAM.

{¶1} Appellant John Eugene Morgan filed a combined application for reconsideration, application for en banc consideration, and motion to certify a conflict. In Appellant's memorandum he essentially contends that our Opinion employs circular reasoning, inconsistently considers the status of his girlfriend, Megan Owens, when reviewing his affidavit, and misapplies the relevant statute. For the reasons provided, Appellant's contentions have no merit and his combined application is denied.

Factual and Procedural History

{¶2} Most of the underlying facts are unimportant, here. Appellant had a contentious relationship with his ex-wife's boyfriend, who was the victim in this case. On the day of the incident, Appellant was to pick up his daughter, whom he shared with his ex-wife. Due to the contentious relationship between Appellant and the victim, Appellant's daughter requested that he pick her up at a corner near her mother's house. Appellant refused that request and instead went to mother's house. Appellant and the victim soon engaged in a confrontation that became physical. At one point, Appellant pulled a gun from his waistband. The victim attempted to run away from Appellant, but while he was running away with his back to Appellant, Appellant fired a shot at the man, killing him. Appellant had a dash camera on his vehicle which recorded the incident. Footage from that camera is at issue in Appellant's current filings to this Court.

{¶3} Appellant was convicted of murder, voluntary manslaughter, and felonious assault. After filing an unsuccessful direct appeal in *State v. Morgan,* 2024-Ohio-5843 (7th Dist.), Appellant appealed to the Ohio Supreme Court, which declined jurisdiction, *State v. Morgan,* 2025-Ohio-1090. Thereafter, Appellant filed an unsuccessful application

to reopen his appeal in *State v. Morgan,* 2025-Ohio-1312 (7th Dist.). Appellant appealed our decision to deny that application to the Ohio Supreme Court, which declined jurisdiction in *State v. Morgan,* 2025-Ohio-2162.

{¶4} That same year, Appellant filed a series of documents in the trial court seeking to obtain the dash camera video for forensic evaluation. On May 25, 2025, the trial court denied all of his filings.

{¶5} Then on June 26, 2025, Appellant filed a "Petition for Post-Conviction Relief, Request for Discovery Period, and Request for Evidentiary Hearing." The trial court denied the petition and Appellant unsuccessfully appealed that decision in *State v. Morgan,* 2026-Ohio-1296 (7th Dist.). Appellant's current filing stems from this appeal.

General Law

{¶6} App.R. 26(A)(1)(a) states, in relevant part: "[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A)."

{¶7} App.R. 26(A)(2)(a) addresses an application for en banc consideration. It provides:

> Upon a determination that two or more decisions of the court on which they sit are in conflict, a majority of the en banc court may order that an appeal or other proceeding be considered en banc. The en banc court shall consist of all full-time judges of the appellate district who have not recused themselves or otherwise been disqualified from the case. Consideration en banc is not favored and will not be ordered unless

> necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed.

{¶8} Motions to certify a conflict are governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides: "[w]henever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination."

{¶9} Under Ohio law, "there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Whitelock v. Gilbane Bldg. Co*., 66 Ohio St.3d 594 (1993), paragraph one of the syllabus.

> We have adopted the following requirements from the Supreme Court:
>
> [A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be "upon the same question." Second, the alleged conflict must be on a rule of law-not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.).

Id. at 596.

Reconsideration

The opinion applies the wrong Strickland prejudice inquiry.

{¶10} In his reconsideration request, Appellant's argument misconstrues *Strickland v Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). He appears to suggest that this Court is prohibited from considering all evidence introduced at trial when determining whether the outcome of the matter would be different if Appellant's alleged additional evidence was considered. It is baffling how a determination could be made as to whether new evidence, or the deletion of evidence that was admitted, would change the outcome of the case without considering all of the other evidence that was admitted. As we stated in our underlying opinion, it is abundantly clear from the record that even if the dash camera video would have been suppressed, the eyewitness testimony of the killing would have resulted in Appellant's conviction. Hence, suppression of the video, or any meta data from it, would not have changed the outcome of the case.

{¶11} Further, as we noted, Appellant concedes that he attempted to use the video in his own favor at trial. He cannot now, armed with knowledge that the video may have helped to convict him, claim that it should never have been admitted into evidence. It is clear that Appellant merely disagrees with the logic employed by this Court, which is not a lawful basis for reconsideration. Hence, Appellant's first issue regarding reconsideration is without merit and is overruled.

The opinion's treatment of Owens's affidavit is internally inconsistent.

{¶12} Appellant argues that this Court's treatment of Owens is inconsistent, as she is described as a lay person but her statement that she discovered issues with the metadata prior to trial was discussed in a manner suggesting that she is an expert.

{¶13} Appellant was responsible for producing an affidavit establishing evidence *de hors* the record to challenge his conviction. While we opined that Owens was not certified as an expert, whether Owens is an expert or not, the fact remains that in her affidavit she makes it clear that Appellant was aware there was a potential problem regarding the video's metadata prior to trial and did nothing. After his conviction, he now seeks to use Owens's belief about an alleged issue with the video, information he was completely aware of prior to trial, and somehow claim that it is now relevant to his bid to reverse his conviction. Again, with or without the video it is abundantly clear Appellant would have been convicted, here. Further, Appellant's knowledge of this alleged issue at the time of trial, where it was not raised when he had the opportunity, means any issue in this regard was waived. Owens's affidavit has the opposite effect that he intended, here. Appellant's second reconsideration issue is without merit and is overruled.

> The petition alleged operative extra-record facts that required a hearing, and res judicata does not bar claims that depend on evidence de hors the record.

{¶14} Appellant argues that he provided the requisite evidence *de hors* the record which should serve to trigger a hearing on the matter. Again, Appellant relies on Owens's affidavit claiming she discovered some metadata problem with the dash camera video prior to trial. However, in his memorandum in support of his current filings, Appellant also

concedes that the defense suggested a forensics service be obtained in regard to the video in its initial discovery motion. (Appellant's Brf., p. 5.) There is no question that Appellant knew about the alleged issue with that dash camera video prior to trial. However, as a part of trial strategy, Appellant opted to use it himself in an attempt to support his self-defense claim, rather than to request the video evidence be suppressed for this alleged reason. Appellant's request for reconsideration has no basis in law or fact pursuant to this record and is overruled.

ALTERNATIVE MOTION FOR EN BANC CONSIDERATION

ALTERNATIVE MOTION TO CERTIFY A CONFLICT

{¶15} Appellant concedes that he must present some intra-district dispute to be entitled to an en banc hearing. However, he has brought no such case to this Court's attention. As Appellant himself can clearly find no intra-district dispute exists, Appellant's request for en banc hearing is likewise without merit and is overruled.

{¶16} Appellant also attempts to have us certify a conflict with the law of another district to the Ohio Supreme Court, arguing that our holding is at odds with the holding in *State v. Francis,* 2014-Ohio-443 (12th Dist.). *Francis* addresses R.C. 2953.21(F), which provides that a hearing must be held "*unless the petition and the files and records of the case show the petitioner is not entitled to relief*." *Id.* at ¶ 13.

{¶17} In *Francis,* the appellant raised two arguments that were addressed. In the first, he claimed that his counsel promised him he would receive a specific sentence. While the appellant produced an affidavit from his counsel stating that it was his understanding that the appellant would receive the stated sentence, the files and records

in the case, including the transcripts, did not support a finding that counsel had promised appellant he would receive any particular sentence.

{¶18} The appellant also argued that his counsel provided ineffective assistance by refusing to file a notice of appeal on his behalf. The trial court ruled that it lacked jurisdiction to rule on the issue, as it involved determining whether the appellant filed a timely notice of appeal. However, on appeal the Twelfth District determined that the trial court had misconstrued the appellant's argument. The court of appeals explained that the motion was based on an argument that counsel provided ineffective assistance, which resulted in his filing being rejected on procedural grounds. *Id.* at ¶ 31. Significantly, the *Francis* Court did not hold that the appellant was necessarily entitled to a hearing. Instead, it remanded the case to the trial court with instructions to reconsider the issue in light of its clarification of the issue. *Id.* at ¶ 32.

{¶19} Again, Appellant himself concedes that he was told there may be some problems with the dash camera video prior to trial. That much is apparent from the Owens's affidavit, itself. His first counsel expressed interest in filing a motion to suppress the video evidence. However, Appellant fired this counsel and obtained new counsel, who chose not to proceed with the suppression motion, and instead attempted to introduce and use the video on Appellant's behalf. While that was, in hindsight, not a successful strategy, it was clearly Appellant's trial strategy.

{¶20} Appellant offers only theories as to what a review of the metadata might show. He does not dispute that the video depicted that he shot the victim in the back as the victim ran away. Appellant does not contend the video contained depictions of actions that did not actually occur. Again, Appellant himself testified at trial, and in over fifty-one

pages of transcript he discussed the video, attempting to construe its contents in his favor. If he believed that the video was missing some footage or had been altered, he should have pointed that out during his testimony, as he was present during the incident and would have known if acts depicted in the video did not reflect the occurrence, itself. Owens's affidavit reveals she had alerted Appellant prior to trial that the video may have some problem. Armed with this knowledge, Appellant and his counsel decided to try, unsuccessfully, to use the video to his advantage. At no time did Appellant claim to the trial court that the video had been altered or tampered with either at trial or prior to trial. Hence, if that can be construed as error in any sense, it was error Appellant was aware of and clearly waived.

{¶21} Even if the video were suppressed, as we have noted in our prior Opinions in this matter, the witness testimony unquestionably demonstrates that Appellant shot the victim as he ran away, which does not support Appellant's claim of self-defense. In addition, the medical examiner testified that the victim was shot in the back. In a jail call, Appellant admitted he was wrong for shooting the victim and said he was not sure if he was being beaten at the time he fired the shot. *State v. Morgan*, 2025-Ohio-1312, ¶ 13 (7th Dist.). Also, on cross-examination:

> Appellant admitted he could have pulled his car out of the driveway when he saw D.P., believing D.P. was aggressive, but he did not. Appellant admitted that before he hit D.P., he first pointed the gun at him. Appellant clarified that when he was pointing the gun at D.P., just before killing him, he saw D.P.'s back. Appellant admitted that when he pulled the trigger, D.P. did not pose any threat to him. Appellant further admitted that after

shooting D.P. in the back, he retook his aim but claimed he did not attempt further shots despite what he told police officers earlier.

State v. Morgan, 2024-Ohio-5843, ¶ 27 (7th Dist.).

{¶22} While Appellant inexplicably now asserts that this Court cannot review the entire trial transcript in rendering a decision as to his current applications and motion, the standard he himself cites provides that an evidentiary hearing is only necessary where the "*files and records of the case"* show that the petitioner is entitled to relief. Trial testimony forms part of the files and records of this case and these records and files show that Appellant is not entitled to relief and that nothing offered by Appellant rises to a level that would even require a hearing. Hence, our decision does not conflict with *Francis.* Accordingly, Appellant's request for en banc hearing or to certify a conflict to the Ohio Supreme Court are without merit and are overruled.

Conclusion

{¶23} For the reasons provided, Appellant's combined application for reconsideration, application for en banc consideration, and motion to certify a conflict is without merit and is denied.

JUDGE CHERYL L. WAITE

JUDGE MARK A. HANNI

JUDGE KATELYN DICKEY

NOTICE TO COUNSEL

This document constitutes a final judgment entry.