[Cite as *State v. Bright*, 2026-Ohio-4287.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 116167
v.	:	
RICKEY M. BRIGHT,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 29, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-22-670918-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Sarah E. Hutnik and Matthew Moretto, Assistant Prosecuting Attorneys, *for appellee*.

Patituce & Associates, LLC, and Joseph C. Patituce, *for appellant*.

LISA B. FORBES, P.J.:

{¶ 1} Rickey M. Bright ("Bright") appeals from the trial court's journal entry denying him leave to file a motion for new trial related to his convictions for

seven criminal offenses. After a thorough review of the record and the law, we affirm.

I. Procedural History

{¶ 2} Following a jury trial, Bright was convicted of one count of rape of a child under the age of ten, two counts of gross sexual imposition, two counts of child endangering, one count of public indecency, and one count of domestic violence. Bright appealed, and this court affirmed his convictions on July 25, 2024. *State v. Bright*, 2024-Ohio-2803 (8th Dist.) ("*Bright I*"). The victims of the offenses at issue were two of Bright's children, N.B. and K.B.

{¶ 3} After his direct appeal, Bright filed a petition for postconviction relief on March 12, 2025. The trial court denied that petition in a journal entry issued on March 26, 2025. Bright filed a second petition for postconviction relief on October 1, 2025, which the trial court denied via journal entry on October 30, 2025. Bright did not appeal from the denial of either of his petitions for postconviction relief.

{¶ 4} Attached to Bright's second petition for postconviction relief were the affidavits of three of his children, Chamar Bright, Chyna Bright, and Asia Bright (collectively, the "Affiants"), none of whom testified at Bright's trial. The Affiants averred that Bright's wife, who testified for the State at trial, had fabricated allegations against Bright and coached other witnesses — namely, N.B. and K.B. — to do the same. The Affiants did not claim that Bright's wife had solicited them to testify falsely and did not claim to have observed Bright's wife coaching N.B. and K.B. to testify falsely. Rather, the Affiants inferred that Bright's wife had coached

N.B. and K.B. based on statements she made about having conspired with another person to testify falsely in a prior case that involved sex offenses. Two of the Affiants claimed to have provided this information to Bright's defense counsel before trial.

{¶ 5} On December 17, 2025, acting pro se, Bright filed four motions, seeking in each leave to file a delayed motion for new trial. The only explanation that Bright's motions provided for his delay in pursuing a new trial was that his court-appointed trial counsel had not done so.

{¶ 6} In his motions, Bright argued that a new trial was appropriate for the following reasons. According to Bright, the trial court improperly admitted evidence related to a toothbrush on which semen that matched his DNA profile was found because it "was never identified by the victim . . . as being the tooth brush that she had used to brush her teeth with after the alleged oral sexual assault." Bright also argued that during trial, the State made remarks that were "likely to inflame the passions of the jurors" and that "lead to a conviction for an improper reason." Bright further took issue with the court permitting at least one of the State's witnesses, a minor victim, to write down information in response to questions during her testimony. Bright asserted that the victim's writings were erroneously introduced into evidence.

{¶ 7} Attached to one of Bright's requests for leave to file a motion for new trial was his own affidavit, in which he asserted that his children had "recanted . . . previous false allegations" that they had made against him at trial. Related to this

claim, Bright's affidavit purported to "incorporate[]" the affidavits that had been attached to his second petition for postconviction relief.

{¶ 8} Without holding a hearing, in a journal entry issued on January 22, 2026, the trial court summarily denied Bright leave to file a motion for new trial. Bright appeals, raising the following assignment of error:

> The trial court abused its discretion in denying Mr. Bright's Motion for Leave filed pursuant to Crim.R. 33.

II. Law and Analysis

{¶ 9} Crim.R. 33(A) sets forth causes for a criminal defendant's motion for new trial, providing 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:
>
> (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;
>
> (2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;
>
> (3) Accident or surprise which ordinary prudence could not have guarded against;
>
> (4) That the verdict is contrary to law;
>
> (5) Error of law occurring at the trial;
>
> (6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is

> reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

Crim.R. 33(A).

{¶ 10} Crim.R. 33(B) imposes timing restrictions on a motion for new trial. Generally, "an application for a new trial must be made within 14 days after the verdict was rendered." *State v. Abraham*, 2026-Ohio-1561, ¶ 8 (8th Dist.). A motion for new trial based on newly discovered evidence under Crim.R. 33(A)(6) "must be made within 120 days after the day upon which the verdict was rendered." *Id.* at ¶ 8, citing Crim.R. 33(B).

{¶ 11} There are exceptions to the deadlines for filing a motion for new trial. "A party who fails to file a timely motion for new trial must seek leave from the trial court to file a delayed motion for new trial." *State v. Hubbard*, 2026-Ohio-2946, ¶ 10 (8th Dist.), citing *State v. Murphy*, 2021-Ohio-3925, ¶ 25 (8th Dist.), citing *State v. Hale*, 2019-Ohio-1890, ¶ 9 (8th Dist.). Where a court finds by clear and convincing proof "that the defendant was unavoidably prevented from filing [the new-trial] motion within" the 14-day period, a defendant has seven days from the court's order to file his or her motion. Crim.R. 33(B). Similarly, concerning newly discovered evidence, if a court finds by clear and convincing proof that a defendant "was unavoidably prevented from discovering the evidence within the 120-day period," a defendant has seven days from the court's order granting leave to file his or her motion for new trial. *State v. McAlpin*, 2026-Ohio-148, ¶ 15-16, citing Crim.R. 33(B).

{¶ 12} "'[A] party is unavoidably prevented from filing a motion for new trial if the party had no knowledge of the existence of the ground supporting the motion . . . and could not have learned of [it] within the time prescribed for filing the motion . . . in the exercise of reasonable diligence.'" *State v. Orr*, 2025-Ohio-5514, ¶ 16 (8th Dist.), quoting *State v. Gray*, 2010-Ohio-11, ¶ 17 (8th Dist.). A defendant is entitled to a hearing on a motion for leave to seek a new trial "only if he submits documents that, on their face, support his claim that he was unavoidably prevented from timely discovering the evidence" that the defendant seeks to introduce to support the request for a new trial. *Id.* at ¶ 18, citing *State v. Cowan*, 2020-Ohio-666, ¶ 11 (8th Dist.).

{¶ 13} Also noteworthy in the context of Crim.R. 33 is the doctrine of res judicata. "Res judicata applies to motions for a new trial . . . and petitions for postconviction relief." *State v. Hatton*, 2022-Ohio-3991, ¶ 22. "The doctrine of res judicata precludes a convicted defendant 'from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised' at trial or on direct appeal." *Id.*, quoting *State v. Szefcyk*, 77 Ohio St.3d 93 (1996), syllabus.

{¶ 14} We review a trial court's ruling on a motion for leave to seek a new trial for abuse of discretion. *McAlpin*, 2026-Ohio-148, at ¶ 14, citing *State v. McNeal*, 2022-Ohio-2703, ¶ 13. An abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. An abuse

of discretion "'implies that the court's attitude is unreasonable, arbitrary or unconscionable.'" *W.A.F.P., Inc. v. Sky Fuel Inc.*, 2024-Ohio-3297, ¶ 13 (8th Dist.), quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Again, to review denial of a motion for leave to seek a new trial, we must assess the record for "clear and convincing proof," which is proof that produces "'"in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established."'" *Orr* at ¶ 15, quoting *Gray* at ¶ 12, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. Clear and convincing proof is a higher standard than proof by a preponderance of the evidence but need not amount to proof beyond a reasonable doubt. *Id.*

{¶ 15} Bright's motion for new trial was filed late under Crim.R. 33(B). More than 120 days elapsed between April 6, 2023, the date on which the jury returned its verdict, and December 17, 2025, the date on which Bright filed the motions underlying this appeal. Bright needed leave of the trial court to file a motion for a new trial.

{¶ 16} We do not find that the trial court abused its discretion in denying Bright leave to move for a new trial. Bright did not show with clear and convincing evidence that he was unavoidably prevented from seeking a new trial until more than two years after the jury announced its verdict, beyond both the 14-day and 120-day deadlines prescribed by Crim.R. 33. The only reason that Bright gave the trial court for his delay in pursuing a new trial is that his prior court-appointed counsel did not file a motion for new trial on his behalf. Bright provided no additional

information on this point. On the information in this record, we are not persuaded that the court abused its discretion by not granting Bright leave to file a motion for new trial based on the purported inaction of Bright's previous attorney.

{¶ 17} We turn next to Bright's reasons for seeking a new trial. Three of the bases upon which Bright seeks a new trial do not concern newly discovered evidence. Bright claims that the State failed to establish that the toothbrush, on which his semen was found, belonged to or was used by one of the victims. Bright also argues that the prosecution made inflammatory comments before the jury and that the court mishandled writings that a minor witness created while testifying. Notably, each of these arguments concerns events that occurred on the record during trial. Nothing before us indicates that Bright could not have raised these arguments in a timely motion for new trial on grounds other than new evidence, which he did not do. Each of these arguments could have been raised on direct appeal, meaning res judicata bars Bright from raising them now. Again, Bright has not explained how he was unavoidably prevented from raising these issues timely. Accordingly, we find that the trial court did not abuse its discretion in denying Bright leave to file a motion for new trial on these grounds.

{¶ 18} We also do not find that the trial court erred in concluding that Bright did not provide clear and convincing proof that newly discovered evidence existed related to his convictions. Where information was known to defense counsel at the time of trial, this court has refused to consider it "newly discovered" even if the defendant did not learn of the information until later. For example, this court has

declined to find that documents were "newly discovered" for purposes of Crim.R. 33 where they appeared to have been "part of the discovery package provided to the defense." *Cowan,* 2020-Ohio-666, at ¶ 20 (8th Dist.) (affirming denial of motion for leave to seek new trial). *See State v. Bias*, 2025-Ohio-2653, ¶ 20 (10th Dist.) ("[W]e have repeatedly held that evidence is not new for purposes of Crim.R. 33(A)(6) where it was designated 'counsel only' and was in defense counsel's possession but not available to the defendant.").

{¶ 19} According to affidavits before the trial court, Bright's wife told his children that she, in concert with another witness, had testified falsely in a different case involving sex offenses against a different defendant (not Bright). This information is the only support that Bright provided for the claim that his wife testified falsely against him and encouraged N.B. and K.B. to do the same. But, according to the Affiants' affidavits, as in *Cowan* and *Bias*, defense counsel was aware before trial of claims that Bright's wife had provided false testimony in the past. We, therefore, find no error in the trial court's conclusion that Bright did not provide clear and convincing proof of newly discovered evidence that merited granting him leave to seek a new trial.[1]

{¶ 20} In light of the foregoing, we do not find that the trial court erred in concluding that Bright did not show that he had been unavoidably prevented from

[1] We decline to address the question of whether Bright's affidavit properly incorporated the affidavits of others. Resolution of that question would not alter the outcome of this appeal.

timely pursuing a new trial under Crim.R. 33(B). Consequently, we do not find that the trial court abused its discretion in denying Bright leave to seek a new trial.

{¶ 21} Accordingly, Bright's sole assignment of error is overruled.

{¶ 22} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LISA B. FORBES, PRESIDING JUDGE

MARY J. BOYLE, J., and
SEAN C. GALLAGHER, J., CONCUR