

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-230495
Plaintiff-Appellee,	:	TRIAL NO. B-9207726A
vs.	:	<i>JUDGMENT ENTRY.</i>
LEONARD WALKER,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.

Defendant-appellant Leonard Walker appeals the common pleas court’s judgment denying his Crim.R. 33(B) motion for leave to file a new trial motion. Asserting four assignments of error, Mr. Walker argues that his jury trial, which took place 30 years ago, was unfair. To the extent that Mr. Walker’s assignments ask us to address the merits of claims that he wishes to raise in a motion for a new trial, we may not do so because Mr. Walker was not granted leave to file such a motion. *See State v. Hatton*, 2022-Ohio-3991, ¶ 33 (“Unless and until a trial court grants a defendant leave to file a motion for a new trial, the merits of the new-trial claim are not before the court.”). However, because Mr. Walker’s assignments may also reasonably be read to generally challenge the denial of his Crim.R. 33(B) motion for leave, we address them as such and overrule them, because Mr.

Walker has not demonstrated that he was unavoidably prevented from discovering the grounds supporting his proposed motion for a new trial until recently.

We review the denial of a Crim.R. 33(B) motion for leave for an abuse of discretion. *State v. Smith*, 2023-Ohio-3954, ¶ 6 (1st Dist.), citing *Hatton* at ¶ 29. “A court exercising its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority” constitutes an abuse of discretion. *Johnson v. Abdullah*, 2021-Ohio-3394, ¶ 35.

In June 2023, three decades after a jury found Mr. Walker guilty of aggravated murder, aggravated robbery, and kidnapping, Mr. Walker moved for leave to file a Crim.R. 33(A)(1) and (6) motion for a new trial, arguing that the state had suppressed potentially exculpatory evidence—the coroner’s testimony in the trial of Mr. Walker’s codefendant. Mr. Walker claims that at his codefendant’s trial, the coroner testified that despite being bound, “it was possible” the victim could have died of natural causes. Mr. Walker maintains that the coroner testified differently at his trial, indicating that there was “no way” the victim could have died of natural causes and that the cause of death was “undetermined homicidal violence.” Mr. Walker claims that he was only recently able to confirm the coroner’s testimony at his and his codefendant’s trials by “scavenging the record.”

A motion for a new trial based on an irregularity in the proceedings under Crim.R. 33(A)(1) must be filed within 14 days of the verdict, and a motion for a new trial based on newly discovered evidence under Crim.R. 33(A)(6) must be filed within 120 days of the verdict “unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for new trial.” Crim.R. 33(B). “Unavoidably prevented” means “the party had no knowledge of the existence of the ground supporting

the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of reasonable diligence.” *State v. McKnight*, 2021-Ohio-2673, ¶ 11 (4th Dist.), citing *State v. Walden*, 19 Ohio App.3d 141, 145-146 (10th Dist. 1984). Further, where a defendant is claiming a violation under *Brady v. Maryland*, 373 U.S. 83 (1963), the defendant may demonstrate unavoidable prevention by showing that the newly discovered evidence had been suppressed by the state. *State v. Howard*, 2022-Ohio-2159, ¶ 30 (1st Dist.).

Mr. Walker claims that he only recently discovered and confirmed that the coroner’s testimony at his trial differed from the testimony at his codefendant’s trial, and surmises that this evidence must have been suppressed by the State. We are unpersuaded. First, Mr. Walker’s trial transcript reflects that the prosecutor had provided Mr. Walker with a copy of his codefendant’s trial transcript prior to (or at) Mr. Walker’s trial. Second, Mr. Walker, who represented himself for a portion of his trial, read from his codefendant’s trial transcript when cross-examining the coroner about his conflicting testimony. Based on this record, Mr. Walker has not demonstrated that any evidence was suppressed by the State or that he had been unavoidably prevented from discovering the grounds (the coroner’s differing testimony at each trial) of his motion for a new trial until recently. Accordingly, the trial court did not abuse its discretion in denying the Crim.R. 33(B) motion for leave to file a motion for a new trial.

Therefore, Mr. Walker’s four assignments of error are overruled, and the judgment of the common pleas court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**ZAYAS, P.J., BERGERON and KINSLEY, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

**To the clerk:**

**Enter upon the journal of the court on 10/09/2024 per order of the court.**

**By:** \_\_\_\_\_  
**Administrative Judge**