

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

STATE OF OHIO,	:	APPEAL NO.	C-250249
	:	TRIAL NO.	B-9209225
Plaintiff-Appellee,	:		
vs.	:		<i>JUDGMENT ENTRY</i>
DANIEL BRADSHAW,	:		
Defendant-Appellant.	:		

**KINSLEY, Presiding Judge.**

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

In 1993, defendant-appellant Daniel Bradshaw was tried for and convicted of rape of a child under the age of 13 and sentenced to life in prison. His conviction was affirmed on direct appeal. *See State v. Bradshaw*, 1994 Ohio App. LEXIS 4331 (1st Dist. Sept. 21, 1994).

Bradshaw now appeals the judgment of the Hamilton County Court of Common Pleas denying his Crim.R. 33(B) motion for leave to file a motion for a new trial. In essence, Bradshaw contends that he received documents through his prison email account in 2021—including a children’s services investigative report, a Social and Medical Clinic (“SAM”) report, and portions of a police case file—that purportedly establish: (1) that the rape occurred at a different time and place from the trial testimony, (2) that the victim and her family failed to cooperate with the police

**OHIO FIRST DISTRICT COURT OF APPEALS**

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investigation of the rape, and (3) that a social worker who counseled the victim and her family lied about the reason that she delayed in reporting the rape to police. Bradshaw argues that the State failed to disclose these documents to him in violation of its obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), thereby entitling him to a new trial. We disagree.

Bradshaw's first assignment of error contends that the trial court erred in denying Bradshaw leave to file a motion for a new trial under Crim.R. 33(B) based on newly discovered evidence without conducting an evidentiary hearing. We review the denial of a Crim.R. 33(B) motion without a hearing for an abuse of discretion. *State v. Smith*, 2023-Ohio-3954, ¶ 6 (1st Dist.). A court abuses its discretion by "exercising its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

A defendant must file a new-trial motion based on newly discovered evidence within 120 days of the verdict, unless the defendant offers "clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely" within the 120-day period. Crim.R. 33(B). Clear and convincing proof is that which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368 (1985). Where a defendant is claiming a *Brady* violation, the defendant may demonstrate unavoidable prevention by showing that the newly discovered evidence was suppressed by the State. *State v. Howard*, 2022-Ohio-2159, ¶ 30 (1st Dist.).

Bradshaw offered no clear and convincing proof that he was unavoidably prevented from discovering the documents he identified as being newly discovered in 2021. The children's services investigative report was an exhibit at Bradshaw's 1993

**OHIO FIRST DISTRICT COURT OF APPEALS**

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trial and the information he alleges to be exculpatory from that report was admitted through testimony at trial. So too was the information Bradshaw highlights in the SAM report the subject of testimony at his 1993 trial. With regard to the police file, which Bradshaw contends documents the social worker's delay in reporting the rape, the jury was well aware of the delay. Moreover, Bradshaw never established in his Crim.R. 33(B) motion that the police file was newly discovered. He did not present an affidavit from his trial attorney—or anyone else for that matter—indicating that the material had not been disclosed by the prosecution at the time of trial. The trial testimony suggested that it was in fact available, because a police officer referenced her summary in court, and the summary was a part of the file.

Given this context, we cannot say that the trial court abused its discretion in denying Bradshaw's Crim.R. 33(B) motion for leave to file a motion for a new trial without a hearing. Bradshaw did not present clear and convincing evidence that he was unavoidably prevented from obtaining the documents he received in 2021, as the record reflects that they were either admitted or testified to at his 1993 trial. Bradshaw's first assignment of error is accordingly overruled.

Bradshaw's second assignment of error takes issue with the trial court's denial of his motion to inspect documents in camera pursuant to Crim.R. 16(H). But Bradshaw did not appeal the trial court's order denying his motion for disclosure of records. Rather, he solely appealed the denial of his Crim.R. 33(B) motion for leave. We accordingly dismiss this assignment of error, as we lack jurisdiction to resolve it.

The judgment of the trial court denying Bradshaw's Crim.R. 33(B) motion for leave to file a motion for a new trial is affirmed.

**OHIO FIRST DISTRICT COURT OF APPEALS**


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The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

**CROUSE and BOCK, JJ.**, concur.

**To the clerk:**

**Enter upon the journal of the court on 3/6/2026 per order of the court.**

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