

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

STATE OF OHIO,	:	APPEAL NO.	C-250289
Plaintiff-Appellee,	:	TRIAL NO.	B-0801279
vs.	:		
MICHAEL JACKSON,	:	<i>JUDGMENT ENTRY</i>	
Defendant-Appellant.	:		

MOORE, 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.

Defendant-appellant Michael Jackson appeals the judgment of the Hamilton County Court of Common Pleas denying his Crim.R. 33(B) motion for leave to file a new-trial motion. For the following reasons, we affirm.

In 2009, following a jury trial, Jackson was convicted of aggravated murder and having a weapon while under a disability in connection with the shooting death of the victim. He unsuccessfully challenged his convictions on direct appeal. *See State v. Jackson*, No. C-090435 (1st Dist. May 26, 2010).

Twenty-five years later, Jackson moved for leave to file a new-trial motion, arguing that his trial was unfair because a State witness, the victim's girlfriend, lied

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during her testimony. Jackson contends that the State knew that the testimony was false and did not correct it. The trial court denied the motion, noting that Jackson had failed to present the evidence necessary under Crim.R. 33(B) to grant the motion for leave.

Jackson now appeals, contending in a single assignment of error, “The State unconstitutionally presented unreliable, uncorroborated, false, and misleading testimony which prevented Appellant from having a fair trial.”

We review the denial of a Crim.R. 33(B) motion for an abuse of discretion. *State v. Smith*, 2023-Ohio-3954, ¶ 6 (1st Dist.), citing *State v. Hatton*, 2022-Ohio-3991, ¶ 29. 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). When considering whether to grant leave to file a new-trial motion, the common pleas court may not consider the merits of the new-trial motion. *Hatton* at ¶ 30, citing *State v. Bethel*, 2022-Ohio-773, ¶ 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 was unavoidably prevented from discovering the evidence on which he seeks to base the motion for a new trial.” *Hatton* at ¶ 30.

Jackson’s argument both in the lower court and on appeal focuses on the merits of his proposed new-trial motion, but the merits are not at issue at the leave stage. *See Bethel* at ¶ 41. Instead, Jackson was required to demonstrate that he was unavoidably

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prevented from discovering the new evidence or the grounds for his proposed motion for a new trial. Jackson makes no such argument.

Nor can we discern how he could have been unavoidably prevented from discovering that the victim's girlfriend allegedly provided false testimony at trial. Her testimony primarily concerned her interaction with Jackson on the night before the shooting. Although she appeared to suggest that Jackson and the victim had been fighting because the victim confronted Jackson's uncle about an alleged violent interaction with the victim's aunt, she admitted on cross-examination that she lacked personal knowledge of that confrontation or of any incident between Jackson's uncle and the victim's aunt. Given the nature of the girlfriend's testimony, any alleged falsity in that testimony would have been apparent to Jackson at the time of trial.

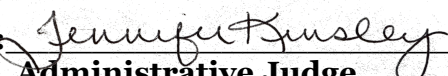
Because Jackson neither offered proof nor explained how he was unavoidably prevented from discovering the alleged falsity of the girlfriend's testimony, we cannot conclude that the trial court abused its discretion in denying Jackson's Crim.R. 33(B) motion for leave to file a new-trial motion. The single assignment of error is overruled, and the judgment of the trial court is affirmed.

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.

ZAYAS, P.J., and **NESTOR, J.**, concur.

To the clerk:

Enter upon the journal of the court on 3/20/2026 per order of the court.

By: 
Administrative Judge