

# SUPREME COURT OF OHIO

## State v. McAlpin

2026-Ohio-148 · No. 2024-0749 · Decided January 21, 2026

### SUMMARY

The Supreme Court of Ohio held that a defendant's failure to obtain leave before filing an untimely motion for a new trial under Ohio Crim.R. 33(B) justified denial of the motion. The court affirmed the Eighth District Court of Appeals' judgment affirming denial of Joseph McAlpin's August 2019 motion for a new trial and remanded for the trial court to address his pending February 2020 motion for leave.

### CASE DETAILS

|                       |                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                               |
| WRITING FOR THE COURT | Chief Justice Kennedy; Justice Fischer; Justice DeWine; Justice Brunner; Justice Deters; Justice Hawkins; Justice Shanahan                                                                                          |
| JURISDICTION          | Supreme Court of Ohio                                                                                                                                                                                               |
| DECIDED               | January 21, 2026                                                                                                                                                                                                    |
| DOCKET                | 2024-0749                                                                                                                                                                                                           |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Appeal from the Eighth District Court of Appeals affirming the trial court's denial of McAlpin's untimely motion for a new trial based on newly discovered evidence.                                                |
| STANDARD OF REVIEW    | A trial court's ruling on a motion for a new trial based on newly discovered evidence, and on a motion for leave to file such a motion, is reviewed for abuse of discretion. Questions of law are reviewed de novo. |
| PRECEDENTIAL VALUE    | Published, precedential decision of the Supreme Court of Ohio                                                                                                                                                       |
| PARTIES               | Joseph McAlpin v. State of Ohio                                                                                                                                                                                     |

### TOPICS

- criminal procedure
- post-conviction relief
- appellate procedure
- standard of review
- preservation of error

### PRACTICE AREAS

- criminal procedure
- appellate procedure
- post-conviction relief

## QUESTIONS PRESENTED

1. Whether the trial court properly denied McAlpin's August 2019 untimely motion for a new trial when he had not obtained leave before filing it.
2. Whether McAlpin's February 2020 motion for leave was directed to the August 2019 motion or instead to the later April 2020 supplemental motion.
3. Whether a court of appeals may treat a trial-court order as implicitly disposing of a motion that the order did not expressly address.

## HOLDINGS

1. Under Ohio Crim.R. 33(B), a defendant must first obtain leave of court before filing an untimely motion for a new trial based on newly discovered evidence. Failure to obtain that leave is sufficient reason to affirm the denial of the untimely motion.
2. The record showed that McAlpin's February 2020 motion for leave was directed to the later April 2020 supplemental new-trial motion, not the August 2019 motion at issue on appeal.

## KEY QUOTATIONS

*“In short, an untimely motion for new trial based on newly discovered evidence may be filed only after the trial court grants leave to file it.”* (¶ 18)

*“A defendant’s failure to obtain leave to file an untimely motion for a new trial is a sufficient reason to affirm a trial court’s denial of a motion for new trial.”* (¶ 23)

*“The trial court properly denied the August new-trial motion because McAlpin did not obtain leave of court to file it, in violation of Crim.R. 33(B).”* (¶ 25)

## FACTUAL BACKGROUND

McAlpin was convicted of aggravated murder and sentenced to death in 2019 for two killings committed during the robbery of a used-car business in Cleveland. He filed an August 2019 motion for a new trial based on newly discovered evidence 126 days after the verdict, without first obtaining leave of court. He later filed a motion for leave and a supplemental new-trial motion, but the trial court denied the August motion without ruling on the pending motion for leave.

## PROCEDURAL HISTORY

McAlpin filed a pro se motion for a new trial in August 2019, more than 120 days after the jury verdict, without first obtaining leave under Ohio Crim.R. 33(B). He later filed a motion for leave in February 2020 and a supplemental new-trial motion in April 2020. The trial court denied the August 2019 motion without ruling on the February motion for leave. The Eighth District affirmed, and the Supreme Court of Ohio affirmed on the ground that McAlpin had not obtained leave before filing the August 2019 motion, while remanding for the trial court to address the pending February 2020 motion for leave.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The Cuyahoga County Court of Common Pleas must address McAlpin's pending February 2020 motion for leave to file a new-trial motion and determine whether he has shown by clear and convincing proof that he was unavoidably prevented from discovering the evidence within the 120-day period prescribed by Crim.R. 33(B).

## CASES CITED

- State v. Hatton, 2022-Ohio-3991, ¶¶ 27-30
- State v. McAlpin, 2022-Ohio-1567, ¶¶ 1, 77, 301
- State ex rel. McAlpin v. Corrigan, case No. 2021-0615
- State v. LaMar, 2002-Ohio-2128, ¶ 85
- State v. Hawkins, 66 Ohio St.3d 339, 350 (1993)
- State v. McNeal, 2022-Ohio-2703, ¶ 13
- State v. White, 2008-Ohio-1623, ¶ 46
- Johnson v. Abdullah, 2021-Ohio-3304, ¶¶ 38-39
- State v. Grad, 2024-Ohio-5710, ¶ 66
- State v. Bethel, 2022-Ohio-783, ¶ 41
- State v. Miller, 2023-Ohio-3448, ¶ 20 (Kennedy, C.J., concurring)
- State v. Norman, 2005-Ohio-5087, ¶ 8

## INSTRUCTIONS FOR AN AI ASSISTANT

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