

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
October 20, 2023

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>.

Case Name: *James Haworth, et al. v. Robert J. Roman, M.D., et al.*
Case No: Montgomery C.A. No. 29687; T.C. Case No. 2022 CV 01124
Panel: Tucker, Epley, Huffman
Author: Christopher B. Epley
Summary: The trial court did not err by striking from the record untimely filed documents that appellant claimed were expert disclosures and reports. A trial court has great discretion in controlling its docket, and the filings were well past the court-imposed deadline. Similarly, the trial court did not err in denying appellant's motion to supplement the documents, which had already been struck from the record. Finally, the court properly granted summary judgment in favor of appellees, as appellant did not have the necessary expert testimony to prove his medical malpractice claim. Judgment affirmed. (Huffman, J., concurring.) (Tucker, J., concurring.)

Case Name: *John Anthony Shutway v. Kevin S. Talebi, et al.*
Case No: Champaign C.A. No. 2023-CA-14; T.C. Case No. 22 CV 0028
Panel: Tucker, Epley, Huffman
Author: Christopher B. Epley
Summary: Appellant brought a civil action against judicial officers, prosecutors, and their unnamed assistants based on his prosecution and conviction in a prior criminal case. In his appeal from the trial court's grant of summary judgment to three defendants and of dismissal pursuant to Civ.R. 12(B)(6) to a fourth, appellant raised claims revolving around alleged procedural irregularities in the assignment of a retired judge to preside over the civil case. The judgments on appeal are final appealable orders, the appeal was timely filed, and we need not dismiss for lack of jurisdiction based on the issues raised. The Ohio Supreme Court's decision denying appellant's affidavit of disqualification is the law of the case, which we must follow. Moreover, no prejudicial error occurred related to the retired assigned judge's filing of his certificate of assignment, and the retired judge had no requirement to take a new oath of office upon his

assignment. Any error in the clerk of courts' labeling of appellant's "praecipies" as motions was harmless as the clerk was required to accept the judge's filings and appellant had no authority to order the clerk to strike them. Judgments affirmed.

Case Name: *State of Ohio v. John Dennis*
Case No: Montgomery C.A. No. 29519; T.C. Case No. 2021 CR 01672
Panel: Welbaum, Epley, Lewis
Author: Ronald C. Lewis
Summary: The trial court abused its discretion by enforcing a blanket sentencing policy that imposed extradition costs on appellant. Judgment affirmed in part, reversed in part, and remanded for resentencing.

Case Name: *State of Ohio v. Diahntae Bell*
Case No: Montgomery C.A. No. 29779; T.C. Case No. 2007 CR 00802
Panel: Tucker, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in overruling appellant's application for post-conviction DNA testing, when his previous application for DNA testing had been denied because the trial court found the results of the testing would not be outcome determinative. Judgment affirmed.

Case Name: *State of Ohio v. Alexander S. Yantis*
Case No: Montgomery C.A. No. 29738; T.C. Case No. 22CRB01391
Panel: Welbaum, Epley, Lewis
Author: Jeffrey M. Welbaum
Summary: Appellant's conviction for domestic violence by threats in violation of R.C. 2919.25(C) was supported by sufficient evidence and was not against the manifest weight of the evidence. In addition, the trial court correctly determined that domestic violence by threats is a lesser included offense of domestic violence in violation of R.C. 2919.25(A). Although this court previously held in *State v. Rihm*, 101 Ohio App.3d 626, 656 N.E.2d 372 (2d Dist.1995) that domestic violence by threats is not a lesser included offense of domestic violence under R.C. 2919.25(A), that holding is no longer appropriate under the Supreme Court of Ohio's modified lesser-included-offense analysis set forth in *State v. Evans*, 122 Ohio St.3d 381, 2009-Ohio-2974, 911 N.E.2d 889. *Rihm* overruled. Judgment affirmed.

Case Name: *Shawn D. Smith, Jr. v. Law Office of Karen Oakley, LLC, et al.*
Case No: Montgomery C.A. No. 29809; T.C. Case No. 2022 CV 00805
Panel: Tucker, Epley, Huffman
Author: Michael L. Tucker
Summary: The trial court did not err in entering summary judgment against appellant on his legal-malpractice complaint. Regardless of

appellees' untimely filing of appellant's petition for a writ of habeas corpus, the habeas claims substantively lacked merit. Therefore, the trial court correctly found no genuine issue of material fact as to whether appellees' performance proximately caused appellant any harm. Judgment affirmed.

Case Name: *State of Ohio v. Jairo Morales-Gutierrez*
Case No: Montgomery C.A. No. 29681; T.C. Case No. 22-CRB-3977
Panel: Tucker, Epley, Huffman
Author: Michael L. Tucker
Summary: Appellant was convicted of domestic violence following a bench trial. The conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *Michael Creech, et al. v. Allstate Insurance Company*
Case No: Montgomery C.A. No. 29811; T.C. Case No. 2023 CV 00733
Panel: Tucker, Epley, Huffman
Author: Mary K. Huffman
Summary: The trial court erred in ruling on appellee's motion for relief from judgment before appellants had an opportunity to file a response to the motion as contemplated by the Ohio Rules of Civil Procedure and the Montgomery County Local Rules. Judgment reversed and remanded.

Case Name: *State of Ohio v. Peter Jemma Atakpu*
Case No: Montgomery C.A. No. 29792; T.C. Case No. 1999 CR 02375
Panel: Tucker, Epley, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in overruling appellant's motion for records, as the records he requested -- stenographer's notes from an April 6, 2000 hearing -- had been misplaced and were no longer available for transcription. Judgment affirmed.