

**THE COURT OF APPEALS OF OHIO**  
**SECOND APPELLATE DISTRICT**  
**CASE SUMMARIES**  
**September 29, 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: *State of Ohio v. Dazian Harding*  
Case No: Greene C.A. No. 2023-CA-17; T.C. Case No. 22 CRB 00963  
Panel: Welbaum, Lewis, Huffman  
Author: Jeffrey M. Welbaum  
Summary: Appellant's convictions for failure to confine a dog and abandoning an animal were supported by sufficient evidence and were not against the manifest weight of the evidence. The State, however, failed to present evidence establishing an element of the offense of failure to register a dog; accordingly, appellant's conviction for that offense was not supported by sufficient evidence. Appellant's claim that certain testimony should not have been permitted at trial because it was inadmissible hearsay and violated the best evidence rule does not involve a substantial right and thus amounts to harmless error. Appellant's ineffective assistance of counsel claim fails because appellant cannot establish that she was prejudiced by her counsel's alleged deficient representation. Judgment affirmed as to the convictions for failure to confine a dog and abandoning an animal and vacated as to the conviction for failure to register a dog.

Case Name: *In the Matter of the Disinterment of Marion J. Glass, Deceased and Irene J. Glass, Deceased*  
Case No: Montgomery C.A. Nos. 29700; 29707;  
T.C. Case Nos. 2020 MSC 00382; 2020 MSC 00383  
Panel: Welbaum, Epley, Lewis  
Author: Jeffrey M. Welbaum  
Summary: The probate court's admission of limited evidence about settlement discussions did not violate Evid.R. 408, which generally prohibits admission of such evidence. Evidence showing bias or motive is excluded from the prohibition in the rule. Here, the factors used to assess disinterment applications require courts to consider the parties' motives and conduct. Appellant also waived objections to admission of settlement evidence; while appellant did challenge

admission of settlement matters at various times during trial, she took the opposite position before trial in response to appellees' liminal motion. In addition, appellant had no issue with admitting such evidence when it was to her advantage, as in a post-trial motion she filed. The probate court also correctly found that appellees did not waive their right to seek disinterment, and it did not abuse its discretion in granting appellees' applications for disinterment. The court applied seven factors used to evaluate disinterment and found that most weighed in favor of disinterment. The court's decision was supported by competent, credible evidence. Furthermore, the court did not abuse its discretion in denying appellant's motion to strike appellees' closing brief and in denying her alternative motion to reopen the evidentiary hearing. Appellant alleged that appellees had engaged in frivolous conduct by making false statements in their closing brief. She attempted to establish this by presenting evidence of attempts to compromise that occurred during mediation and at one other point before trial. However, the court correctly noted that appellant attempted to conceal such evidence during trial but was then seeking to use it to her benefit. The court also correctly found that counsel have great latitude in closing argument, and that appellees' closing brief did, in fact, discuss the evidence as it existed in the trial record. Finally, the court did not abuse its discretion in denying the motion to reopen. The court actually did consider the evidence that appellant wished to submit but found it was duplicative and unnecessary. Judgments affirmed.

Case Name:	<i>State of Ohio v. Edward S. Stevens</i>
Case No:	Clark C.A. No. 2023-CA-20; T.C. Case No. 23-CR-012
Panel:	Welbaum, Lewis, Huffman
Author:	Jeffrey M. Welbaum
Summary:	Appellant's claim that his trial counsel provided ineffective assistance by failing to file an affidavit of indigency prior to sentencing lacks merit because appellant failed to establish that he was prejudiced; the record establishes that even if counsel had filed such an affidavit, there was not a reasonable probability that the trial court would have found appellant indigent and waived his mandatory fine. Appellant's argument that his 12-month prison sentence for third-degree-felony aggravated possession of drugs is contrary to law lacks merit because the sentence falls within the authorized statutory range for third-degree felonies and the record establishes that the trial court considered the purposes and principles of felony sentencing in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Judgment affirmed.

Case Name: *State of Ohio v. Brian K. Coons*  
Case No: Montgomery C.A. No. 29593; T.C. Case No. 2021 CR 01067  
Panel: Welbaum, Tucker, Epley  
Author: Michael L. Tucker  
Summary: The trial court erred in including in its judgment entry a statement that appellant is ineligible for earned credit under R.C. 2967.193. Although appellant is ineligible for earned credit on his sentence for gross sexual imposition, nothing in R.C. 2967.193 precludes appellant from obtaining earned credit on his consecutive sentence for corrupting another with drugs. Judgment affirmed in part, reversed in part, and remanded for the filing of a corrected judgment entry.

Case Name: *[M.A.M.] on Behalf of Minor Children v. [A.P.H.]*  
Case No: Montgomery C.A. No. 29763; T.C. Case No. 2020 DV 01557  
Panel: Welbaum, Lewis, Huffman  
Author: Mary K. Huffman  
Summary: Father appeals from a consent agreement approved in the domestic relations court, which resolved Mother's petition for a domestic violence civil protection order on behalf of the parties' minor children. A case related to the parties' parenting rights was also then pending in the juvenile court. Although the domestic relations court had jurisdiction over the petition for a protection order, it was not permitted to issue orders affecting parental rights and responsibilities over which the juvenile court had jurisdiction. From the record before us, we cannot determine whether any of the provisions of the protection order infringed on the juvenile court's jurisdiction. The domestic relations court did not err in failing to dismiss the consent agreement because of delay in scheduling the full hearing on the petition for the protection order; Father had requested continuances, had changed counsel several times, and had relevant criminal matters pending that were also continued. Father consented to the inclusion of both children in the consent agreement, although domestic violence allegations related to only one of the children; as such, the domestic relations court did not err in failing to dismiss the consent agreement with respect to one of the children. After Mother and Father agreed in the consent agreement to engage in reunification counseling, the specific counselor named in the agreement refused to participate. The domestic relations court did not err in concluding that reunification counseling was a material part of the consent agreement, but not the specific counselor, and that the consent agreement did not have to be reconsidered in light of the specific counselor's refusal to participate. Judgment reversed in part and remanded for clarification and additional consideration of whether the consent agreement infringed on the juvenile court's jurisdiction. In all other respects, judgment affirmed.

Case Name: *Gerome M. Childs v. Midwest Laundry Inc, et al.*  
Case No: Montgomery C.A. No. 29783; T.C. Case No. 2022 CV 04653  
Panel: Welbaum, Lewis, Huffman  
Author: Mary K. Huffman  
Summary: The trial court did not err in dismissing appellant's administrative appeal without prejudice for failure to prosecute pursuant to Civ.R. 41(B)(1). Judgment affirmed.

Case Name: *State of Ohio v. Terrance Vonjur Butler*  
Case No: Montgomery C.A. No. 29754; T.C. Case No. 2021 CR 02014  
Panel: Welbaum, Tucker, Epley  
Author: Christopher B. Epley  
Summary: The trial court did not err in finding that the State had proved beyond a reasonable doubt that appellant did not use deadly force in self defense. Appellant fired ten rounds at a fleeing car and killed a woman running after the vehicle. Further, appellant's convictions for felonious assault were supported by sufficient evidence. Judgment affirmed.

Case Name: *Kevin J. Curley v. Khameron D. Wilcox*  
Case No: Montgomery Case No. 29587; T.C. Case No. 2020 CV 00739  
Panel: Epley, Lewis, Huffman  
Author: Ronald C. Lewis  
Summary: The trial court did not err in refusing to dismiss prospective jurors for cause solely on the basis that they were policyholders of appellee's liability insurance company, which paid for appellee's expert. The jury verdict in favor of appellant was against the manifest weight of the evidence because there was no evidence submitted at trial on which the jury could reasonably have calculated an amount of damages that was not inherently speculative. Judgment affirmed in part, reversed in part, and remanded for a new trial on damages.