

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

STATE OF OHIO,	:	APPEAL NO. C-170161
	:	TRIAL NO. C-16CRB-29475
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
THOMAS FREEL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Thomas Freel appeals the Hamilton County Municipal Court’s April 2017 judgment convicting him of assault and the court’s June 2017 judgment overruling his motion for a new trial based on newly discovered evidence. On appeal, Freel presents a single assignment of error, challenging the court’s exercise of its discretion in overruling his new-trial motion. We overrule the assignment of error.

Freel’s motion was reviewable under Crim.R. 33(A)(6), which permits a court to grant a new trial on the ground of newly discovered evidence. Following a hearing, the municipal court, applying the standard established in *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947), overruled the motion upon its determination that the newly discovered evidence supported the state’s theory of the case and thus did not disclose a strong probability that it would change the result if a new trial were granted. *See id.* at syllabus.

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From our review of the record, we cannot say that that determination was arbitrary, unconscionable, or the product of an unsound reasoning process. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”). We, therefore, hold that the municipal court did not abuse its discretion in overruling Freel’s new-trial motion. *See State v. Williams*, 43 Ohio St.2d 88, 330 N.E.2d 891 (1975), paragraph two of the syllabus (holding that the decision on a new-trial motion is discretionary). Accordingly, we affirm the court’s judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on June 20, 2018
per order of the court _____.
Presiding Judge