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Ohio Fifth District Court of Appeals Case Summaries

Case Type	Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
Criminal	STATE VS. DONOVAN COLLIER	Case No. 2024 CA 00161	Appeal from the Court of Common Pleas of Stark County , Case No. 2024 CR 1226	Reversed and Remanded	Trial court erred by not giving a criminal defendant an opportunity to speak again at the sentencing hearing where the prosecution presented new information and exhibits after the defendant had addressed the court. Collier appealed his sentence following a guilty plea to multiple charges, including felonious assault and domestic violence, arguing that the trial court erred by not allowing him to respond to new evidence introduced by the prosecution at the sentencing hearing. While the court did not address his other claims — that the judge acted vindictively and failed to consider his ability to pay restitution — it found that Collier’s right to allocution was violated when the trial judge reviewed photos of the victim’s damaged vehicle presented by the prosecutor and relied on them in crafting the sentence without giving Collier or his counsel a chance to respond. Because the judge expressly based the sentence on that new evidence and denied defense counsel’s attempt to address it, the appellate court held the error was not harmless. Accordingly, it reversed the sentence and remanded the case for a new sentencing hearing.	Gormley, J.	7/14/2025
Criminal	STATE VS. RANDY D. CUTRIGHT, JR.	Case Nos. 24CA000037 24CA000038	Appeal from the Guernsey County Court of Common Pleas, Case Nos. 24CR000099 & 24CR000164	Affirmed	Allied offenses of similar import Cutright, Jr. appealed his sentence following guilty pleas to charges of domestic violence, attempted burglary, and vandalism, arguing that the trial court erred by not merging the domestic violence and attempted burglary charges as allied offenses. The charges stemmed from a May 2024 incident in which Cutright, while on post-release control for a prior domestic violence conviction, broke into the victim’s home, broke down her bedroom door, and struck her during a struggle. He was indicted for multiple offenses, and after a plea deal, received an aggregate sentence of 57 months in prison. On appeal, Cutright claimed the trial court committed plain error by failing to merge the offenses, but the appellate court found the crimes caused separate and identifiable harms and were committed with separate animus. Because Cutright did not raise the merger issue at sentencing, the court applied a plain error review and concluded no manifest miscarriage of justice occurred. The trial court’s judgment was affirmed.	Popham, J.	7/16/2025
Criminal	STATE VS. HOWARD E. HARPER, JR.	Case No. 24CA00041	Appeal from the Guernsey County Court of Common Pleas, Case No. 24CR104	Affirmed	Illegal use of SNAP benefits or WIC benefits; intentional program violator Harper, Jr. appealed his sentence after pleading guilty to one count of illegal use of SNAP benefits, a fourth-degree felony, for failing to report employment income, resulting in an overpayment of \$2,328. Harper, who had a lengthy criminal history and was on post-release control at the time, was sentenced to nine months in prison, ordered to pay restitution, and deemed an “intentional program violator,” making him ineligible for government assistance for one year. On appeal, Harper argued that his plea was not knowingly and voluntarily entered because he was not informed of the one-year disqualification from public benefits. The appellate court found that the trial court complied with the requirements of Crim.R. 11 regarding constitutional rights and that the benefit disqualification was a collateral consequence, not a constitutional right requiring advisement. Because Harper failed to show he would not have pled guilty had he known of the disqualification, the court concluded there was no prejudice and affirmed the trial court’s judgment.	Popham, J.	7/16/2025
Criminal	STATE VS. JASON M. ELLIS	Case No. 2024 CA 00027	Appeal from the Fairfield County Court of Common Pleas, Case No. 2024 CR 00128	Affirmed	Manifest weight of the evidence; sufficiency of the evidence The appellant was indicted for Domestic Violence, Strangulation, and Violating a Protection Order, though the latter charge was later dismissed. He was convicted of Domestic Violence and sentenced to twelve months in prison. The victim, his deceased brother’s wife, testified that she allowed the appellant to stay at her apartment, and during an argument on March 6, 2024, he headbutted her and put his hands on her neck. The appellant claimed her injuries were accidental. On appeal, he raised five assignments of error, all of which the court rejected. The court found the conviction was supported by sufficient evidence and not against the manifest weight of the evidence, affirmed that an affinity relationship survives a spouse’s death, held that failure to request a lesser-included offense instruction was a matter of trial strategy, and concluded the trial court properly imposed consecutive sentences based on appropriate findings and the appellant’s criminal history.	Baldwin, P.J.	7/17/2025

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Civil	1221 ALUM CREEK DRIVE PROPERTIES, LLC VS. BOWLING GREEN TOWNSHIP BOARD OF ZONING APPEALS, ET AL.	Case No. 2024 CA 00084	Appeal from the Licking County Court of Common Pleas, Case No. 2023 CV 01235	Affirmed, in part; Reversed and Remanded, in part	Appeal from the denial of conditional use by Board of Zoning Appeals; applicant requesting conditional use has standing to appeal to Court of Common Pleas; amendment to township resolution invalid when commissioners failed to comply with r.c. 519.12 and applicable township resolutions The Bowling Green Township Board of Zoning Appeals (BZA) appealed a decision by the Licking County Court of Common Pleas that reversed the BZA's denial of conditional use permits sought by 1221 Alum Creek Drive Properties, LLC to construct whiskey storage warehouses in an agricultural district. The trial court found that Alum Creek had standing to appeal the BZA's decision and that the BZA failed to provide adequate public notice of zoning amendments that eliminated warehousing as a conditional use. While the Fifth District Court of Appeals agreed Alum Creek had standing and that the zoning amendment was invalid due to insufficient notice, it also found the trial court erred by not considering the BZA's alternative reasons for denying the permits, such as environmental concerns, incompatibility with the township's rural character, and safety issues. As a result, the appellate court affirmed the trial court's ruling in part, reversed in part, and remanded the case for further proceedings.	Hoffman, J.	7/10/2025

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