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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 |
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| Criminal  | <a href="#">STATE VS. RICKY STEVENS</a>               | Case No. CT2025-0009 | Appeal from the <b>Muskingum County</b> Court of Common Pleas, Case No. CR2024-0741 | Affirmed in part, reversed in part, remanded for further proceedings | Receiving stolen property; manifest weight & sufficiency of the evidence; other acts evidence; sentencing; lack of remorse; restitution<br><br>Stevens appealed his conviction for receiving stolen property (a license plate) and his 12-month prison sentence. He claimed there was insufficient evidence that the plate was stolen or that he knew it was stolen. The court found the bent condition of the plate and how it was affixed suggested it had been forcibly removed, supporting the jury's conclusion that Stevens knew or should have known it was stolen. Stevens also challenged the admission of evidence showing drug paraphernalia and stolen clothing found in his truck. The court ruled this evidence was relevant to show knowledge or absence of mistake and was not unfairly prejudicial, especially given a limiting instruction to the jury. Stevens did not object at trial, so any review was for plain error. He further argued that the court improperly considered his lack of remorse when imposing the maximum sentence, infringing on his right to maintain innocence. The appellate court held the sentence was justified due to his extensive criminal record and that lack of remorse was not a decisive factor. Lastly, the court agreed the \$40 restitution was incorrect, as the victim testified to a \$30 replacement cost. The judgment was affirmed in all respects except for restitution, which was remanded to correct the amount. | Hoffman, J.   | 6/13/2025              |
| Criminal  | <a href="#">STATE VS. ARTHUR RICHARD HIGGINS, II.</a> | Case No. 24CA0003    | Appeal from the <b>Perry County</b> Court of Common Pleas, Case No. 23-CR-0018      | Affirmed in part; Vacated in part                                    | Other acts; eight of evidence; severance of counts; jury instructions; ineffective assistance<br><br>A jury convicted Higgins of three counts of rape and five counts of gross sexual imposition, sentencing him to concurrent prison terms and classifying him as a Tier II sex offender. Higgins appealed, arguing the trial court erred in denying his motion to sever the charges and admitting certain statements from the victims, but the appellate court found no abuse of discretion or evidentiary error. Although Higgins challenged the specificity of the indictment and jury instructions, the State conceded that Counts 4 and 5 lacked sufficient notice, and those convictions were vacated. The court rejected Higgins' remaining arguments, including claims that his convictions were against the manifest weight of the evidence and that he received ineffective assistance of counsel. The judgment was affirmed in part and vacated in part.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Popham, J.    | 6/13/2025              |
| Criminal  | <a href="#">STATE VS. GAGE L. SMITH</a>               | Case No. CT2025-0027 | Appeal from the <b>Muskingum County</b> Court of Common Pleas, Case No. CR2022-0030 | Affirmed                                                             | Post conviction relief; Res judicata<br><br>Gage L. Smith appealed the denial of his post-conviction relief petition, arguing that the restitution amount in his identity fraud and theft case was incorrect and that the trial court should have held a hearing. Smith claimed the loss was \$27,983, not \$46,846 as ordered. The Fifth District affirmed, finding the petition was untimely and barred by res judicata because Smith could have raised these arguments at trial or on direct appeal. The court also held that no evidentiary hearing was required since the claims lacked merit under the law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Baldwin, P.J. | 6/17/2025              |
| Criminal  | <a href="#">STATE VS. DUSTIN ALLEN GOULD</a>          | Case No. 24AP0012    | Appeal from the <b>Morgan County</b> Court of Common Pleas, Case No. 19CR0021       | Remanded                                                             | Sentence in judgment entry differs from sentence imposed at hearing<br><br>Gould challenged the trial court's September 26, 2024 sentencing entry, which erroneously imposed a consecutive sentence on one count despite the trial court having imposed concurrent sentences on all counts at the September 24, 2024 sentencing hearing. Gould had entered into a plea agreement and was sentenced to 36 months on Counts One and Two, and 17 months on Count Three, all to be served concurrently. However, the written entry incorrectly stated that Count Three was to be served consecutively. The appellate court found this discrepancy to be a clerical error and remanded the case for the limited purpose of issuing a nunc pro tunc entry correcting the written sentencing entry to reflect the sentence actually imposed at the hearing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Baldwin, P.J. | 6/18/2025              |
| Criminal  | <a href="#">STATE VS. NICHOLAS SCHILLING</a>          | Case No. CT2024-0110 | Appeal from the <b>Muskingum County</b> Court of Common Pleas, Case No. CR2024-0411 | Affirmed                                                             | Manifest weight of the evidence; sufficiency of the evidence<br><br>The appellant challenged his convictions for possession and trafficking of drugs, as well as the related firearm specifications, arguing they were based on insufficient evidence and were against the manifest weight of the evidence. The court disagreed, finding ample evidence to support the convictions. Testimony established that the appellant lived at and controlled the residence where drugs and firearms were found, and messages on his phone detailed drug sales. Law enforcement recovered fentanyl, methamphetamine, methylphenidate, and multiple operable firearms during a search. A customer confirmed buying drugs from the appellant, and his girlfriend testified she got drugs from him, trusting his careful preparation. The court concluded the evidence was sufficient to uphold the convictions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Baldwin, P.J. | 6/18/2025              |

| Case Type          | Case Caption                                                              | Case No(s)                              | Character of Proceeding                                                                                           | Judgment                           | Topics and Issues                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Author        | Date of Judgment Entry |
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| Juvenile           | <a href="#">IN RE: Z.C.</a>                                               | Case No.<br>2024CA00195                 | Appeal from the <b>Stark County</b> Court of Common Pleas, Family Court Division, Case No. 2023JCV00689           | Affirmed                           | <p>Permanent custody; findings mother abandoned child &amp; child could not/should not be placed with mother were not against the manifest weight of the evidence; finding best interest to grant permanent custody to Agency not against the manifest weight of the evidence</p> <p>S.H. (Mother) appealed the Stark County Juvenile Court’s decision granting permanent custody of her child, Z.C., to Stark County Job and Family Services. The court found Mother abandoned the child by not visiting for over 90 days, failed to remedy the conditions leading to removal, and made minimal progress on her case plan. The child had been in the same foster home since birth, was thriving, and the foster family wished to adopt. The Fifth District affirmed, finding clear and convincing evidence supported the trial court’s decision that permanent custody was in the child’s best interest.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Hoffman, J.   | 6/16/2025              |
| Juvenile           | <a href="#">IN THE MATTER OF: P.J.M. (DOB 7/15/21), D.M. (DOB 1/3/23)</a> | Case Nos.<br>2024CA0027 :<br>2024CA0028 | Appeal from the <b>Coshocton County</b> Court of Common Pleas, Juvenile Division, Case Nos. 20233004 and 20233005 | Affirmed                           | <p>Permanent custody</p> <p>T.M. appealed the Coshocton County Juvenile Court’s decision granting permanent custody of her children, P.J.M. and D.M., to Coshocton County Job and Family Services. The court found clear and convincing evidence that the children could not be safely returned to either parent due to ongoing domestic violence, substance abuse, neglect, and failure to follow case plans. The children were bonded with their foster family, who wished to adopt them. The Fifth District affirmed, rejecting T.M.’s claims that the custody award was unsupported, that the guardian ad litem couldn’t file for custody, and that an adoption plan was required before granting permanent custody.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Baldwin, P.J. | 6/16/2025              |
| Juvenile           | <a href="#">IN THE MATTER OF: H.B.</a>                                    | Case No.<br>CT2024-0088                 | Appeal from the <b>Muskingum County</b> Court of Common Pleas, Juvenile Division, Case No. 22220381               | Affirmed in part; Remanded in part | <p>Admissibility of forensic interviewer testimony regarding child victim of sexual assault</p> <p>The appellant, H.B., challenged the juvenile court’s decision adjudicating him delinquent on two counts of gross sexual imposition involving a six-year-old child, A.W. The charges stemmed from an incident during a family gathering, after which A.W. exhibited significant behavioral changes and later disclosed the abuse in a forensic interview. Evidence included forensic testimony, witness accounts, and DNA analysis that did not exclude H.B. as a contributor. H.B. denied the allegations and presented witnesses to challenge A.W.’s credibility. On appeal, H.B. argued that the trial court erred by indicating he had entered a plea of admission (when he had not), and that admitting A.W.’s statements from the forensic interview violated his constitutional right to confrontation and hearsay rules. The appellate court agreed that the plea entry was a clerical error and remanded for correction via nunc pro tunc entry. However, the court found the child’s statements admissible for medical diagnosis under Evid.R. 803(4) and not testimonial in nature, thus not violating the Confrontation Clause. It also upheld the sufficiency and weight of the evidence supporting the delinquency finding. Accordingly, only the first assignment of error was sustained, and the remaining three were overruled.</p> | Baldwin, P.J. | 6/18/2025              |
| Domestic Relations | <a href="#">W.R. S. T.C.</a>                                              | Case No.<br>23 DV H 12 0763             | Appeal from the Court of Common Pleas, Domestic Relations Division, of <b>Delaware County</b>                     | Affirmed                           | <p>Domestic violence; civil protection order; appellant failed to file transcript; Civ.R. 53(D)(3)(b)(iii); App.R. 9; menacing by stalking; evidence set forth by magistrate supports decision to issue CPO</p> <p>T.D. appealed a Delaware County court’s decision granting a domestic violence civil protection order (CPO) in favor of her sister, W.R. The trial court found T.D. engaged in menacing by stalking through threatening texts and social media posts that caused W.R. fear and mental distress. On appeal, T.D. argued the CPO violated her rights and was unsupported by the evidence. The Fifth District affirmed, finding T.D. failed to provide a transcript or proper affidavit, leaving no basis to overturn the trial court’s factual findings or conclusion that the CPO was warranted.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Hanni, J.     | 6/16/2025              |

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