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Ohio Fifth District Court of Appeals Case Summaries

Case Caption	Case No(s)	Character of Proceeding	Judgment	Topics and Issues	Author	Date of Judgment Entry
Westannco, Servs., Inc. v. Bigham	2025 CA 00017	Appeal from the Fairfield County Court of Common Pleas, Case No. 2024-CV-00799	Reversed	Jurisdictional priority rule does not apply Westannco Services, Inc. and its owner, Randy Bigham, appealed the Fairfield County Common Pleas Court’s dismissal of their civil complaint against Pamela Bigham, which alleged commercial disparagement, tortious interference, defamation-related claims, and emotional distress arising from allegedly false statements made during a contentious, still-pending divorce. The trial court had dismissed the case under the jurisdictional priority rule, concluding that the earlier-filed domestic relations action divested the general division of jurisdiction. The appellate court reversed, holding that the jurisdictional priority rule does not apply when two cases are filed within different divisions of the same common pleas court that possess the same statutory subject-matter jurisdiction, as is the case in Fairfield County. Relying on Ohio Supreme Court precedent, the court concluded the trial court erred in dismissing the complaint and remanded the matter, leaving procedural coordination of the divorce and civil claims to the common pleas court.	King	1/16/2026
State v. Cobb	2025CA0066, 2025CA0086	Appeal from the Richland County Court of Common Pleas, Case Nos. 2022 CR 0147 R 2022 CR 0497 R	Affirmed	Request to hold hearing for community service to pay costs properly denied; R.C. 2947.23(B) Defendant-Appellant Bryant K. Cobb appealed the Richland County Court of Common Pleas’ August 13 and September 10, 2025 judgment entries denying his motions in two separate criminal cases for a hearing to determine whether he should be ordered to perform community service while incarcerated to satisfy court costs and permitted fees. In Case No. 2022 CR 0147 R, Cobb was indicted on drug-related charges, pled guilty to illegal conveyance of drugs, and was sentenced to eighteen months in prison with costs and fees imposed; in Case No. 2022 CR 0497 R, he pled no contest to possession of a fentanyl-related compound and possession of cocaine, received an aggregate six-to-nine-year consecutive prison sentence, and was likewise ordered to pay costs and fees. After filing motions in 2025 seeking hearings under R.C. 2947.23(B), the trial court denied both requests, and the appellate court affirmed. The Fifth District held that a hearing under R.C. 2947.23(B) is required only when there is reason to believe a defendant has failed to pay court costs or failed to comply with an approved payment schedule. Because Cobb’s commissary accounts were being garnished toward his costs and no payment schedule existed, he failed to meet either statutory condition. Accordingly, the appellate court found no error in the trial court’s denial of the motions and affirmed the judgments.	King	1/16/2026
State v. Kovach	2025CA00038	Appeal from the Court of Common Pleas of Stark County , Case No. 2024CR1685	Affirmed	Defense counsel’s decision not to object at the client’s jury trial appears to have been a reasonable tactical choice rather than ineffective assistance of counsel, and the defendant’s strangulation and assault convictions are not against the manifest weight of the evidence. At sentencing, the trial court did not commit plain error by imposing community-control conditions barring the defendant from using illegal drugs or alcohol and barring him from entering liquor stores and bars. Douglas Kovach appealed his convictions for felony strangulation and misdemeanor assault stemming from an August 2024 altercation with his former girlfriend, K.W., arguing that the verdicts were against the manifest weight of the evidence, that his trial counsel was ineffective, and that the trial court improperly imposed community-control conditions. The appellate court affirmed the convictions, finding that K.W.’s testimony describing strangulation, kicking, destruction of her phone, and injury to her legs was credible and corroborated by police observations, Kovach’s own admissions, and medical evidence documenting injuries consistent with strangulation and assault. The court held that the jury did not lose its way in resolving credibility issues, that trial counsel’s handling of testimony regarding the Chaturbate website reflected reasonable trial strategy and caused no prejudice, and that Kovach failed to demonstrate ineffective assistance. Finally, reviewing only for plain error because no objection was raised at sentencing, the court upheld the community-control conditions requiring abstention from drugs and alcohol and avoidance of bars, concluding that they did not amount to a manifest injustice.	Gormley	1/20/2026
State v. Ellerbe	2024 CA 0081	Appeal from the Richland County Court of Common Pleas, Case No. 2023-CR-0829	Affirmed	Manifest weight; sufficiency; ineffective assistance of trial counsel; sentencing Defendant-Appellant Cyrus Ellerbe appealed his October 7, 2024 convictions and sentence arising from a mass shooting at a crowded Halloween party held at an Airbnb in Mansfield, Ohio, where two people were killed and four others injured after Ellerbe and a codefendant opened fire inside the home and continued shooting while fleeing in a vehicle. Following a jury trial, Ellerbe was convicted on multiple counts of murder, felony murder, felonious assault, and firearm offenses, and was sentenced to an aggregate term of 67 years to life. On appeal, he argued that his convictions were against the manifest weight and sufficiency of the evidence, that he received ineffective assistance of counsel, and that his sentence—including multiple firearm specifications—was contrary to law. The appellate court rejected each claim, finding ample direct and circumstantial evidence identifying Ellerbe as a shooter, including eyewitness testimony and surveillance video, holding that credibility determinations were for the jury, concluding that counsel’s strategic decisions did not constitute ineffective assistance, and determining that the imposition of consecutive sentences and firearm specifications was proper given the multiple victims and distinct harms involved. Accordingly, the Fifth District Court of Appeals affirmed the judgment of the Richland County Court of Common Pleas.	King	1/20/2026

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State v. Lovell	25CA00040	Appeal from the Court of Common Pleas of Licking County , Case No. 25CR85	Affirmed	The trial judge's response to a written question from jurors during deliberations was correct and not misleading, and the defendant's conviction on a felony domestic-violence charge was supported by sufficient evidence and was not against the manifest weight of the evidence. Defendant Nicholas C. Lovell appealed his third-degree felony domestic-violence conviction, arguing that the evidence was insufficient and against the manifest weight of the evidence and that the trial court erred in answering a jury question during deliberations. The case arose from a February 11, 2025 incident in which police responded to a neighbor's report of a dispute and learned that Lovell's girlfriend, B.H., with whom he shared a child, alleged Lovell had punched her and struck her face, causing visible injuries documented by photographs and body-camera footage. Although B.H. later sought to recant and was reluctant to cooperate, she testified at trial that Lovell caused her physical harm, and the jury heard evidence of her prior statements and observed her credibility firsthand. During deliberations, the trial court correctly answered "no" to the jury's question about whether B.H. faced perjury for contradicting her earlier, unsworn police statements, a response the appellate court found accurate and not misleading. Concluding that the State presented sufficient evidence on all elements of domestic violence, that credibility determinations were for the jury, and that no abuse of discretion occurred, the appellate court affirmed Lovell's conviction.	Gormley	1/20/2026
State v. Hinkle	25-COA-025	Appeal from the Ashland County Court of Common Pleas, Case No. 25-CRI-044	Affirmed	Anders; Sentencing; Guilty plea; Crim.R. 43; Plain error The Court considered the Anders brief and Motion to Withdraw filed by appellate counsel Christopher Bazeley on behalf of Dakota Hinkle, who was indicted on April 10, 2025, for strangulation and domestic violence, pled guilty to domestic violence, and was sentenced to 12 months incarceration. Hinkle consented to appear remotely for his plea and sentencing hearings, though the trial court did not advise him of his rights under Crim.R. 43. Counsel reviewed the record and determined no non-frivolous issues existed to support an appeal, prompting the Court to conduct an independent review. The Court found that Hinkle's consent to remote proceedings, coupled with no evidence of prejudice or communication issues with counsel, meant any alleged error was not plain or outcome-altering. Accordingly, the Court affirmed the trial court's judgment, found the appeal frivolous under Anders, and granted counsel's motion to withdraw.	Montgomery	1/21/2026
State v. Jackson	2025 CA 00011	Appeal from the Massillon Municipal Court (Stark County), Case Nos. 2023 TRC 4779 & 2023 CRB 1708	Reversed and Remanded	Hearing on Motion to suppress; jurisdiction of trial court after appeal is filed In this delayed appeal, Corey Jackson challenged the Massillon Municipal Court's denial of his motion to suppress without holding an evidentiary hearing following a traffic stop on July 22, 2023, which led to charges of OVI, marked-lanes violations, and marijuana possession. Jackson filed an untimely motion to suppress, arguing the dash-camera footage did not show a traffic violation, but the trial court summarily denied the motion and later issued post-hoc findings of fact and conclusions of law after Jackson entered no-contest pleas and was sentenced. The appellate court found that the trial court abused its discretion by resolving a factual dispute regarding reasonable articulable suspicion without an evidentiary hearing, depriving Jackson of his procedural rights. Jackson's first assignment of error was sustained, the second was deemed premature, and the trial court's denial of the motion to suppress was vacated. The case was reversed and remanded for further proceedings.	Popham	1/21/2026
Wood v. Energex Power, Inc.	CT2025-0098	Appeal from the Muskingum County Court of Common Pleas, Case No. CH2024-0076	Affirmed	Decertification of class action Donald Wood appealed the Muskingum County Court of Common Pleas' sua sponte decertification of a class action he filed against Energex Power for unpaid oil-and-gas royalties. Although Wood obtained a default judgment against Energex, damages were never determined, and the trial court later decertified the class after Wood—acting as both class representative and class counsel—failed for over a year to provide a list of class members and proposed notice forms as ordered. The appellate court held that because no final judgment had been entered, the trial court retained broad discretion under Civ.R. 23 to revisit and decertify the class. It further found no abuse of discretion, concluding that Wood failed to adequately represent and protect the interests of the class and that serving simultaneously as class representative and counsel rendered him an inadequate representative as a matter of law. Accordingly, the appellate court overruled Wood's assignment of error and affirmed the trial court's judgment.	Popham	1/21/2026
State v. Stanley	25 CA 015	Appeal from the Court of Common Pleas of Fairfield County , Case No. 2024 CR 00088	Affirmed and Remanded	Where the evidence presented to a jury on four rape charges and on unrelated child-porn charges was simple and direct, a criminal defendant's trial counsel who failed to seek the severance of those charges was not ineffective. The trial court's inclusion of information about post-release control in a sentencing entry involving life-in-prison sentences was improper, but the error can be corrected with a revised sentencing entry. A new sentencing hearing need not be held, and information about parole need not be included in the revised sentencing entry even though parole is possible for the defendant's rape convictions. Thomas Stanley was convicted by a jury of four counts of rape involving a minor and a criminal-tools offense, though he was acquitted of numerous obscenity-related charges tied to child-nudity images found on a flash drive. On appeal, Stanley argued that his trial counsel was ineffective for failing to seek separate trials for the rape charges and the image-related charges, and that the trial court erred by advising him about post-release control at sentencing. The appellate court rejected the ineffective-assistance claim, concluding that the evidence for the different offenses was simple, direct, and clearly separable, as shown in part by the jury's mixed verdicts, and that a motion to sever would not likely have succeeded. The court also determined that post-release control does not apply to Stanley's life sentences for rape, which are instead governed by parole statutes, but found this error harmless. Accordingly, the court affirmed Stanley's convictions and sentences, while remanding solely to correct the sentencing entry to remove any reference to post-release control.	Gormley	1/23/2026

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State v. Summerville	CT2025-0065	Appeal from the Muskingum County Common Pleas Court, Case No. CR2025-0009	Affirmed	Appellate review of felony sentence James E. Summerville was involved in a hit-skip accident in January 2025, admitted to drinking alcohol, failed field sobriety tests, and was indicted on two OVI counts; he ultimately pleaded guilty to a fourth-degree felony OVI based on having three prior OVI convictions within ten years, and the remaining count was dismissed. The trial court sentenced him to 24 months in prison, a \$2,000 fine, and a lifetime driver's license suspension. On appeal, Summerville argued that the sentence was disproportionate and contrary to law because the trial court allegedly failed to impose the minimum sanctions required under R.C. 2929.11 and improperly relied on his prior OVI convictions to enhance his sentence. The appellate court applied the clear-and-convincing standard of review and concluded that the sentence fell within the statutory range, that the trial court expressly considered the required sentencing factors, and that the record supported the court's findings, particularly given Summerville's extensive criminal history and noncompliance with prior conditions. Because Summerville failed to demonstrate error and did not meaningfully argue his second assignment of error, the court overruled both claims and affirmed the judgment of the Muskingum County Court of Common Pleas.	Montgomery	1/23/2026
State v. Tysinger	CT2025-0067	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2024-0695	Affirmed	Denial of motion to seal records after not guilty finding was not an abuse of discretion. Jared G. Tysinger appealed the Muskingum County Court of Common Pleas' denial of his application to seal records after he was acquitted by a jury of two counts of gross sexual imposition. Following the not-guilty verdict, Tysinger sought record sealing under R.C. 2953.33, citing concerns about future employment, housing, custody issues, and participation in his children's activities, while the State opposed the request based on asserted governmental and public interests. Applying an abuse-of-discretion standard, the appellate court concluded the trial court reasonably weighed Tysinger's interests against the State's and did not act unreasonably, arbitrarily, or unconscionably, particularly given that Tysinger was gainfully employed, had not demonstrated actual harm from the records, and had a prior criminal history unrelated to the acquitted charges. Although the appellate court noted statutory provisions limiting the State's asserted interests and directed the trial court to ensure compliance with DNA-record provisions if applicable, it ultimately affirmed the denial of record sealing and overruled Tysinger's sole assignment of error.	King	1/23/2026
State v. Yoder	25CA0022	Appeal from the Court of Common Pleas of Coshocton County , Case No. 23CR0074	Affirmed	Criminal defendant's request that his sentencing entry be corrected was not proper under Criminal Rule 36, where the requested change would have altered the initial decision by the trial judge rather than simply ensuring that the entry reflected what the judge had in face decided. More than a year after being sentenced to a mandatory indefinite prison term for second-degree-felony aggravated possession of drugs, Marvin Yoder filed a motion asking the trial court to "correct" his sentencing entry to reflect potential eligibility for a reduction of his minimum term based on exceptional conduct while incarcerated. The trial court denied the motion, explaining that Yoder was serving a mandatory sentence and was not eligible for such a reduction. On appeal, the court concluded that Yoder's request did not seek to correct a clerical error under Crim.R. 36 but instead asked for a substantive change to the legal decision made at sentencing, which the trial court lacked authority to make after the judgment became final. Because a nunc pro tunc entry cannot be used to alter the substance of a sentence, the appellate court affirmed the trial court's denial of Yoder's motion.	Gormley	1/23/2026
Canton-Stark Cty. Sewer Cleaning, Inc. v. Magee	2025CA00054	Appeal from the Stark County Court of Common Pleas, Case No. 2023 CV 01534	Affirmed in part; Reversed in part	Unjust enrichment; Breach of contract The Magees appealed a May 2, 2025 judgment arising from a plumbing dispute with Canton-Stark County Sewer Cleaning, Inc. dba Roto-Rooter, which sued them for nonpayment of \$7,623.40 for basement plumbing repairs, asserting breach of contract and unjust enrichment, while the Magees counterclaimed under contract, fraud, and Ohio consumer protection statutes. After partial summary judgment, a bench trial, and a magistrate's decision, the trial court ruled largely in favor of Roto-Rooter, including on unjust enrichment, while finding limited Consumer Sales Practices Act (CSPA) violations and awarding modest damages but no attorney fees. On appeal, the Fifth District Court of Appeals affirmed the trial court's dismissal of the Home Solicitation Sales Act claim, upheld most rulings regarding CSPA violations and attorney fees, but reversed the unjust-enrichment judgment, finding the trial court made inconsistent and unreconciled findings about whether an enforceable oral contract existed. The appellate court remanded the case for clarification on the existence and terms of any contract and whether unjust enrichment is an available remedy, while affirming the remainder of the judgment and overruling the cross-appeal.	Baldwin	1/23/2026