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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
Alsup v. Alsup	25AP0002	Appeal from the Morgan County Court of Common Pleas, Case No. 25 DV 0127	Affirmed	Civil protection order The court affirmed the trial court's issuance of a Domestic Violence Civil Protection Order (DVCPO) against Matthew Alsup, finding no abuse of discretion or due process violation. Although Alsup and his counsel failed to appear at the rescheduled July 9, 2025 full hearing, the appellate court concluded that proper notice of the continuance was provided through email service to counsel in compliance with Civ.R. 5, and that counsel's failure to review the attached, file-stamped entry did not render service defective. The court also rejected Alsup's argument that the petition was legally insufficient, holding that the issue was waived because it was not raised in the trial court, and, alternatively, that the petition and attached handwritten statement contained detailed factual allegations of physical, verbal, sexual, and financial abuse sufficient to support the order. Absent a transcript of the full hearing, the appellate court accepted the trial court's findings of controlling behavior, threats, and abuse, and therefore overruled both assignments of error and affirmed the judgment.	Baldwin	1/27/2026
State v. Hoffer	CT2025-0076	Appeal from the Court of Common Pleas of Muskingum County , Case No. CR2025-0123	Affirmed	The trial court properly declined to merge charges of felonious assault and discharging a firearm on or near prohibited premises. John Hoffer appealed his convictions for felonious assault and discharging a firearm on or near prohibited premises, arguing the two offenses were allied and should have merged for sentencing, but the appellate court affirmed. The case arose after Hoffer joined a group seeking to confront a suspected sexual assailant, and, while riding in a vehicle, fired a shotgun at a pedestrian believed to be involved, seriously injuring him. Although both convictions stemmed from the same incident, the court held that the offenses are of dissimilar import because felonious assault targets harm to an identifiable individual, while the discharging-a-firearm offense protects the public from the inherent danger of firing over a roadway, even when the same person is physically injured. The court further rejected the argument that the elevation of the discharge offense based on causing serious physical harm or the presence of a firearm specification altered the merger analysis, concluding that the trial court properly declined to merge the offenses and correctly imposed separate convictions and sentences.	Gormley	1/27/2026
State v. Hart	2024 CA 0073	Appeal from the Richland County Court of Common Pleas, Case No. 2023 CR 0580R	Affirmed	Arson/Daubert/Expert testimony/Lay witness testimony/Rebuttal witness/Ineffective assistance/Prosecutorial misconduct The appellate court affirmed Carolyn Hart's convictions for aggravated arson and arson arising from a kitchen fire in the home of a 76-year-old homeowner with whom Hart had been living, concluding that none of Hart's six assignments of error warranted reversal. The court held that the trial court did not abuse its discretion in qualifying the State's fire investigator as an expert or in admitting his incendiary-origin opinion, that Hart waived or forfeited any reliability challenge, and that any assumed error was harmless given substantial independent evidence, including surveillance footage, testimony that Hart and her granddaughter removed items from the home before the fire, Hart's inconsistent explanations, and her purchase of renters' insurance two days before the fire and submission of questionable claims. The court further found no plain error in allowing a rebuttal expert to testify, no ineffective assistance of counsel for failing to object to a firefighter's lay observations, no improper burden shifting during cross-examination of the defense expert, and no prosecutorial misconduct during closing argument. Finally, the court rejected Hart's cumulative-error claim and upheld her merged sentence of an indefinite term of seven to ten and one-half years in prison, restitution, and arson-registry requirements.	Popham	1/27/2026
Miller v. Lexington Court Care Ctr.	2025 CA 0033	Appeal from the Richland County Court of Common Pleas, Case No. 2024-CV-288N	Affirmed	Respondeat superior; Cause of action under Patient Bill of Rights R.C. 3721.17 The appellate court affirmed summary judgment in favor of Lexington Court Care Center and the remaining defendants in a wrongful-death and nursing-home negligence action brought by Sarah Miller, personal representative of Mary Holt's estate, holding that Miller failed to present evidence creating a genuine issue of material fact on direct or vicarious liability. Although Miller alleged violations of the Nursing Home Bill of Rights, medical negligence, and wrongful death arising from Holt's care after her 2019 admission and subsequent death in 2020, she produced no affidavits, expert testimony, medical records, or other Civ.R. 56 evidence establishing breach of the standard of care or causation. The court further held that Miller's affidavit of merit served only to establish the adequacy of the complaint and could not be used as summary-judgment evidence, and that prior dismissal and time-bar of the John Doe defendants foreclosed vicarious liability against the corporate defendants. Because Miller failed to meet her reciprocal burden after defendants demonstrated the absence of evidence supporting essential elements of her claims, all five assignments of error were overruled and the trial court's April 8, 2025 grant of summary judgment was affirmed.	Montgomery	1/27/2026

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State v. Strohl	CT2025-0059	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2024-0527	Affirmed	Consecutive sentences; Appellate review of sentence; Record must support consecutive sentence findings The appellate court affirmed the Muskingum County Court of Common Pleas’ imposition of two consecutive eighteen-month prison sentences on David Strohl following his no-contest pleas to two counts of third-degree-felony aggravated vehicular assault arising from a drunk-driving crash that seriously injured two victims. Although Strohl conceded that the trial court made the required consecutive-sentencing findings under R.C. 2929.14(C)(4), he argued the findings were not supported by the record, a claim the appellate court rejected under the deferential standard of R.C. 2953.08(G)(2). The court emphasized the severe, life-altering physical and psychological injuries suffered by both victims, the trial court’s consideration of victim impact statements, Strohl’s decision to drive with a high blood-alcohol level, and his prior criminal history. While the trial court briefly referenced Strohl’s lack of remorse, the appellate court concluded that ample other factors supported the consecutive sentences and that the record did not clearly and convincingly undermine the trial court’s findings. Accordingly, the sole assignment of error was overruled and the judgment affirmed.	Montgomery	1/27/2026
State v. Bradley	2025 CA 00038	Appeal from the Licking County Court of Common Pleas, Case No. 2024 CR 00791	Affirmed/ Reversed in Part	Offenses were not allied offenses; Community control; Sanctions overly broad The appellate court affirmed in part and reversed in part the May 6, 2025 sentence imposed on Marcus Bradley following his guilty pleas to two counts of menacing by stalking, dissemination of an image of another person, burglary, and theft stemming from a months-long campaign of harassment against his ex-girlfriend. The court rejected Bradley’s claim that the trial court erred by failing to merge offenses as allied offenses of similar import, concluding that the burglary and theft, as well as the menacing-by-stalking and dissemination counts, were committed separately, with distinct harms and separate animus, and that Bradley failed to demonstrate plain error. However, the court agreed in part with Bradley’s challenge to certain community control conditions, holding that prohibitions on alcohol and drug use and entering establishments that serve alcohol were overly broad and unrelated to the offenses, particularly where the record showed no substance-abuse problem. The court therefore struck those specific conditions but upheld the remaining community control sanctions, including mental health treatment and other supervisory measures, and affirmed the judgment in all other respects.	King	1/27/2026
In re Adoption of C.S.	2025 AP 11 0040	Appeal from the Tuscarawas County Court of Common Pleas, Probate Division, Case No. 2025AD3565	Affirmed	Manifest weight of the evidence; Ineffective assistance of counsel L.S. appealed a Tuscarawas County Probate Court decision finding her consent was not required for the adoption of her two children by their stepmother, H.Z., who is married to the children’s father. The evidence showed that L.S. had not seen the children since April 2023, made only a small fraction of permitted phone calls and supervised visits, and struggled with ongoing substance abuse, incarceration, and repeated relapses, while the children were thriving in H.Z.’s stable care and had lived primarily with her for years. The trial court concluded, by clear and convincing evidence, that L.S. failed without justifiable cause to have more than de minimis contact with the children during the year preceding the adoption petition, making her consent unnecessary, and further found adoption to be in the children’s best interests. On appeal, the Fifth District Court of Appeals held that these findings were supported by the manifest weight and sufficiency of the evidence and that credibility determinations were properly left to the trial court. The court also rejected L.S.’s claim of ineffective assistance of counsel, finding she failed to demonstrate deficient performance or resulting prejudice. Accordingly, the appellate court affirmed the adoption decree.	Baldwin	1/28/2026
In re Adoption of C.S.	2025 AP 11 0041	Appeal from the Tuscarawas County Court of Common Pleas, Probate Division, Case No. 2025AD3566	Affirmed	Manifest weight of the evidence; Ineffective assistance of counsel L.S. appealed a Tuscarawas County Probate Court decision determining that her consent was not required for the adoption of her two children by their stepmother, H.Z., who is married to the children’s father. Evidence showed that L.S. had not seen the children since April 2023, made only a small fraction of permitted phone calls and supervised visits, and struggled with long-standing substance abuse, repeated relapses, and incarceration, while the children were thriving in H.Z.’s care and had lived primarily with her for years. Although L.S. claimed she attempted regular contact and was blocked from communicating, the trial court found, by clear and convincing evidence, that she failed without justifiable cause to have more than de minimis contact with the children during the year preceding the adoption petition and that adoption was in the children’s best interests. On appeal, the Fifth District Court of Appeals held that the trial court’s findings were supported by the manifest weight and sufficiency of the evidence and that credibility determinations were properly within the trial court’s discretion. The appellate court also rejected L.S.’s claim of ineffective assistance of counsel, concluding she failed to demonstrate deficient performance or resulting prejudice, and therefore affirmed the adoption decree.	Baldwin	1/28/2026
State v. Stewart	2025CA00026	Appeal from the Stark County Court of Common Pleas, Case No. 2024-CR-1901	Affirmed	Sufficiency; Manifest weight; Admission of testimony of prior domestic violence convictions Eugene Stewart appealed his felony domestic violence conviction arising from an August 25, 2024 incident in which the victim, L.H., testified that Stewart punched and choked her after becoming angry when she failed to bring him marijuana, causing her to lose consciousness and suffer injuries requiring stitches. A jury acquitted Stewart of two strangulation counts but found him guilty of domestic violence, enhanced to a third-degree felony based on his two prior domestic violence convictions, one involving L.H., and he was sentenced to 30 months in prison. On appeal, Stewart argued the evidence was insufficient, the verdict was against the manifest weight of the evidence, and the trial court improperly allowed evidence of his prior convictions despite his stipulation. The appellate court held that L.H.’s testimony and corroborating evidence established the elements of domestic violence and showed that Stewart and L.H. had cohabited within the previous five years, satisfying the “family or household member” requirement. The court further concluded that credibility determinations were for the jury, the conviction was supported by sufficient and competent evidence, and the trial court properly admitted limited evidence of the prior conviction solely to establish an element of the offense with appropriate limiting instructions. Accordingly, the conviction and sentence were affirmed.	Baldwin	1/28/2026

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State v. Trager	CT2025-0078	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2025-0313	Affirmed	Sentencing Pheona Trager appealed her convictions and aggregate indefinite prison sentence of six to eight and one-half years following guilty pleas to second-degree felony possession of methamphetamine with a firearm specification, fifth-degree felony possession of psilocybin, and fifth-degree felony permitting drug abuse, arising from controlled drug buys and a search of her residence that uncovered methamphetamine, psilocybin, multiple firearms, and cash. She argued that the sentence failed to reflect the minimum sanctions necessary under R.C. 2929.11 and that the trial court did not adequately weigh mitigating factors such as her youth, lack of criminal record, remorse, and substance abuse and mental health issues. The appellate court applied R.C. 2953.08 and held it could not reweigh sentencing factors, noting the trial court expressly considered R.C. 2929.11 and R.C. 2929.12, reviewed the presentence investigation, heard from all parties, imposed a sentence within the statutory range, and in fact sentenced Trager to less than the maximum based on mitigating circumstances and her lesser role compared to her co-defendant. Finding the sentence not clearly and convincingly contrary to law, the Fifth District Court of Appeals overruled Trager's assignment of error and affirmed the trial court's judgment.	Popham	1/28/2026
Hernandez v. Vasquez	2025 AP 060022	Appeal from the Tuscarawas County Court of Common Pleas, Juvenile Division, Case No. 2025 CC 00001	Affirmed	Motion to retain jurisdiction Mayra Perez Hernandez appealed the juvenile court's June 10, 2025 judgment denying her motion to retain jurisdiction over M.G.M. after the child reached the age of majority, arguing that continued jurisdiction was necessary because M.G.M. still had several years of high school remaining. M.G.M., born in Guatemala in 2007, fled severe abuse and neglect by her father and entered the United States as an unaccompanied minor in August 2023, after which Hernandez provided care and support and later sought temporary custody. Although Hernandez filed a custody complaint before M.G.M. turned 18, no adjudication finding M.G.M. abused, neglected, or dependent was issued prior to her eighteenth birthday. The appellate court held that under R.C. 2151.353(F)(1), a juvenile court may only retain jurisdiction past age 18 to continue an existing order of disposition, which requires a prior adjudication. Because no such order existed before M.G.M. reached majority, the juvenile court lacked authority to retain jurisdiction, and the denial of the motion was affirmed.	King	1/29/2026
State v. Adams	25CA000014	Appeal from the Guernsey County Court of Common Pleas, Case No. 21-CR-396	Reversed	Post-conviction relief; Hearings on post-conviction relief; R.C. 2953.21; R.C. 2953.23 Maggie Adams appealed the Guernsey County Court of Common Pleas' denial of her petition for post-conviction relief without a hearing following her 2022 convictions for aggravated drug trafficking and related offenses and an aggregate mandatory sentence of 18 to 23½ years. After her convictions were affirmed on direct appeal, Adams filed a timely pro se petition and later a supplemental petition asserting multiple constitutional violations, including ineffective assistance of counsel and due process, Fourth, Sixth, and Eighth Amendment claims. The trial court denied relief, concluding the petition was untimely under an outdated version of R.C. 2953.21 requiring filing within 180 days and further finding Adams failed to meet the heightened standards for untimely petitions under R.C. 2953.23. The appellate court held the trial court erred by applying the obsolete statute, noting the current law allows 365 days from the filing of transcripts and that Adams filed within that period. Because the petition was timely, the trial court's jurisdictional and substantive analysis was flawed, requiring reversal and remand for proper consideration of the petition under the correct statutory framework.	Montgomery	1/29/2026
Del Rosario v. Fresh Mark, Inc.	2025-CA-00076	Appeal from the Stark County Court of Common Pleas, Case No. 2024CV01970	Affirmed	Summary judgment granted to employer on workers' compensation claim; "qualifying chemical test" Rolando Del Rosario appealed the trial court's grant of summary judgment in favor of his employer, Fresh Mark, Inc., after his workers' compensation claim for hand injuries sustained on the job was denied based on evidence that he was under the influence of marijuana at the time of the accident. Del Rosario tested positive for marijuana at an extremely high level approximately two hours after the incident, and Fresh Mark presented expert medical testimony that his impairment affected judgment, coordination, and reaction time and was the proximate cause of the injury. On appeal, Del Rosario argued the drug test was not a "qualifying chemical test" under R.C. 4123.54(C), but the appellate court held this argument was irrelevant because Fresh Mark did not rely on the statutory rebuttable presumption and instead proceeded under R.C. 4123.54(A)(2), which requires proof of impairment and proximate cause. Finding that Fresh Mark met its burden through unrefuted medical evidence and that Del Rosario failed to present contrary expert evidence creating a genuine issue of material fact, the appellate court affirmed the grant of summary judgment and the denial of workers' compensation benefits.	King	1/29/2026
State v. Hill	2025CA00028	Appeal from the Stark County Court of Common Pleas, Case No. 2024 CR 2455 A	Affirmed	Manifest weight; Sufficiency of evidence; Ineffective assistance of counsel Anthony Ramon Hill appealed his convictions for two counts of trespass in a habitation when a person is present or likely to be present and two counts of criminal damaging, stemming from a late-night incident in which a woman awoke to find a man in her bedroom and a second woman searching her kitchen, with both fleeing after being confronted. Police soon located Hill and his companion, LaKenya Jones, nearby; Jones was positively identified by the victim and admitted entering the apartments, while Hill was found hiding in Jones's apartment and made incriminating spontaneous statements. Following a jury trial, Hill was convicted on all counts and sentenced to an aggregate prison term of eighteen months. On appeal, Hill argued insufficient evidence, manifest weight of the evidence, and ineffective assistance of counsel based on trial strategy involving body-camera footage. The appellate court held that the circumstantial and testimonial evidence, along with Hill's conduct and statements, was sufficient to support the convictions, that the jury did not lose its way in weighing the evidence, and that counsel's actions constituted reasonable trial strategy rather than deficient performance. Accordingly, the convictions and sentence were affirmed.	Baldwin	1/29/2026

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State v. Cornwell	25CA002	Appeal from the Holmes County Court of Common Pleas, Case No. 24CR030	Affirmed	Failure to Remove Trial Judge's Mother from Jury - Structural Error - Ineffective Assistance of Counsel Joslyn Cornwell appealed her conviction and five-year prison sentence for attempted rape of a child under thirteen, arguing the trial court violated her constitutional rights by allowing the trial judge's mother to serve on the jury or, alternatively, that trial counsel was ineffective for failing to remove her. The case arose from an incident in which an eleven-year-old relative reported that Cornwell's boyfriend attempted to sexually assault her after Cornwell told the child he wanted to "adult cuddle" with her and left the premises, and Cornwell later admitted to police that she had discussed and facilitated the boyfriend's plans. The appellate court held that Criminal Rule 24(C) does not automatically disqualify relatives of a trial judge from jury service, that nothing in the juror's voir dire responses indicated bias, and that the trial court did not abuse its discretion in failing to excuse her sua sponte. The court further rejected the claim of structural error, noting the issue could have been raised and corrected at trial, and concluded Cornwell failed to demonstrate prejudice necessary to establish ineffective assistance of counsel. Accordingly, the judgment of conviction and sentence was affirmed.	Hoffman	1/29/2026
State v. Kiser	25-COA-022	Appeal from the Ashland County Court of Common Pleas, Case No. 25-CRI-001	Affirmed	Fleeing and Eluding - Insufficient Evidence - Lesser Included Offense Instruction - Admission of Evidence of Prior Convictions Edsel Kiser appealed his conviction and eighteen-month prison sentence for felony failure to comply with the order or signal of a police officer, stemming from a snowy early-morning traffic stop in which he accelerated after an attempted stop, led a deputy on a five-mile, six-minute pursuit at speeds up to 70 mph, crossed the center line multiple times, and ran a red light before stopping in a driveway. Kiser argued the evidence was insufficient to show he fled or eluded police, that the jury should have been instructed on a lesser-included offense, and that the trial court improperly allowed evidence of his prior convictions. The appellate court held the evidence was sufficient to establish willful flight, as his actions met the legal definition of fleeing despite his claim he intended to stop later, and that the facts did not support an instruction on the lesser offense. The court also concluded Kiser opened the door to impeachment with his prior assault-on-a-peace-officer convictions by testifying about one of them. Accordingly, the Ashland County Common Pleas Court's judgment was affirmed.	Hoffman	1/29/2026