



Stark County Law Library
110 Central Plaza South, Suite 401, Canton, OH 44702
www.starkcountyohio.gov/law-library



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
State v. Smith	2025 CA 0029	Appeal from the Court of Common Pleas of Richland County , Case No 2024 CR 0423-N	Reversed and Remanded	The defendant's convictions on two gross-sexual-imposition charges are reversed where the State relied on inadmissible hearsay and where the State offered no proof on the force-or-threat-of-force element of the crimes. His convictions on rape charges are also reversed because the State introduced evidence focusing on the defendant's pre-arrest invocation of his right to remain silent and his right to counsel, and no corrective instruction was given to the jury. Defendant Bret Smith appealed his convictions for three counts of rape and two counts of gross sexual imposition (GSI), arguing that the State improperly introduced evidence of his pre-arrest silence and retention of counsel and that the evidence was insufficient to support the GSI convictions. The appellate court agreed on both points, reversing the two GSI convictions outright and ordering acquittals because the State failed to present sufficient admissible evidence that Smith used force or threat of force against R.S., as required under Ohio law. The court found that the State relied heavily on inadmissible hearsay, including Snapchat messages and recorded interviews, which were improperly admitted without limiting instructions and could not be considered substantive evidence. R.S. herself testified at trial that Smith had never sexually abused her and described the only touching incident as accidental. The court also held that the trial court committed plain error by allowing the jury to hear extensive testimony that Smith had hired an attorney before arrest, directed detectives to communicate through counsel, and declined to speak with investigators. The prosecutor further introduced the attorney's letter into evidence, emphasizing Smith's pre-arrest silence and invocation of counsel in violation of constitutional protections recognized in State v. Leach. Because the rape case largely depended on witness credibility and lacked physical evidence, the appellate court concluded the error was prejudicial and not harmless. Accordingly, the court reversed Smith's rape convictions and remanded the case for a new trial on those charges while barring retrial on the GSI counts under double jeopardy principles.	Gormley	5/15/2026
Berry-Silverman v. Silverman	25 CAF 10 0094	Appeal from the Delaware County Court of Common Pleas, Domestic Relations Division, Case No. 20 DR B 07 0346	Affirmed	Contempt Melissa Berry-Silverman appealed the denial of her motion to hold her ex-husband, Andrew Silverman, in contempt for allegedly violating provisions of their divorce decree concerning repairs to the marital home, payment of an equalization award, and division of retirement accounts. The appellate court affirmed the trial court's decision, finding that Melissa failed to prove contempt by clear and convincing evidence. Regarding repairs to the marital residence, the court noted that Melissa delayed the home's sale by filing bankruptcy and pursuing an appeal while continuing to live in the home with her paramour as Andrew paid the mortgage, taxes, and insurance. Although Melissa claimed over \$70,000 in necessary repairs, she failed to show the repairs were required by a realtor, inspector, or buyer, failed to prove the parties agreed they were necessary, and presented evidence that her paramour completed and paid for much of the work. On the equalization payment, the decree required Andrew to pay \$14,213 minus Melissa's share of fees owed to Heather Deskins, but Melissa failed to establish the amount of those fees, preventing the court from determining the precise payment owed. As to the retirement accounts, the evidence showed neither party had fully completed the required transfers, and Andrew testified he had contacted the financial advisor and believed Melissa still needed to complete paperwork. The court also rejected Melissa's argument concerning the magistrate's reference to the doctrine of unclean hands, explaining that regardless of that doctrine, Melissa failed to prove Andrew alone was responsible for the incomplete transfers. Applying an abuse-of-discretion standard, the appellate court concluded the trial court reasonably determined Melissa had not established contempt and therefore affirmed the judgment of the Delaware County Court of Common Pleas.	Baldwin	5/15/2026
State v. Green	CT2025-0138	Appeal from the Muskingum County Court of Common Pleas, Case No. CR2025-0376	Affirmed	Consecutive sentences; Jointly recommended sentence; Sentencing discretion Defendant-Appellant Schuyler Green challenged the Muskingum County Court of Common Pleas' decision to impose a 78-month aggregate prison sentence, which exceeded the parties' jointly recommended five-year sentence following his guilty plea to multiple firearm and receiving stolen property offenses. Green argued that the trial court improperly relied on stipulated consecutive-sentence findings tied to the plea agreement without making independent findings justifying additional consecutive sentences under Ohio law. The appellate court rejected his argument, emphasizing that a jointly recommended sentence is not binding on the trial court so long as the defendant is informed of the possible penalties and the court's discretion to reject the recommendation. The court found that the trial judge thoroughly reviewed Green's extensive criminal history, the harm to multiple victims, and his ongoing substance abuse issues before imposing sentence. The trial court also made all findings required by R.C. 2929.14(C)(4) both at the sentencing hearing and in the judgment entry, including that consecutive sentences were necessary to protect the public and were not disproportionate to the seriousness of the conduct. Because the record supported those findings and each sentence was within the statutory range, the Fifth District Court of Appeals affirmed the trial court's judgment.	Montgomery	5/18/2026



Stark County Law Library
110 Central Plaza South, Suite 401, Canton, OH 44702
www.starkcountyohio.gov/law-library



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
In re M.L.	2025 CA 00091	Appeal from the Licking County Common Pleas Court, Juvenile Division, Case No. F2023-0052	Affirmed	Permanent custody; Reasonable efforts by agency; Reunification; R.C. 2151.414; Ineffective assistance of counsel; 2151.414(E)(1); 2151.414(E)(4); 2151.414(E)(16) Mother and Father challenged the Licking County Juvenile Court's decision granting permanent custody of their children, S.L. and M.L., to Licking County Job and Family Services, but the appellate court affirmed the ruling. The children were removed in February 2023 after police found the parents behaving erratically at a gas station while under the influence of drugs, with narcotics, a loaded firearm, stolen identification cards, and other suspicious items in the vehicle. Both parents later faced criminal charges, and throughout the case the Agency developed reunification plans requiring substance abuse treatment, mental health services, parenting education, and stable housing and income. Although the parents completed some services and showed limited progress late in the case, the evidence demonstrated ongoing concerns regarding substance abuse, denial of responsibility, mental health issues, and failure to meaningfully remedy the conditions that led to removal. The children, who had lived with the same foster family for nearly three years, consistently expressed fear of returning home and wished to remain with their foster parents. The Guardian ad Litem also strongly supported permanent custody, citing the parents' continued denial of their problems and the emotional harm caused to the children. On appeal, the parents argued that the trial court improperly relied on evidence, that counsel was ineffective, that the Agency failed to provide records and reasonable reunification efforts, and that permanent custody was not supported by the evidence. The appellate court rejected all arguments, finding substantial evidence that the Agency made diligent reunification efforts, that the parents failed to substantially remedy the issues causing removal, and that permanent custody was in the children's best interests because it provided the stability, safety, and permanency the children needed.	Montgomery	5/18/2026
In re S.L.	2025 CA 00089	Appeal from the Licking County Common Pleas Court, Juvenile Division, Case No. F2023-0051	Affirmed	Permanent custody; Reasonable efforts by agency; Reunification; R.C. 2151.414; Ineffective assistance of counsel; 2151.414(E)(1); 2151.414(E)(4); 2151.414(E)(16) Mother and Father challenged the Licking County Juvenile Court's decision granting permanent custody of their children, S.L. and M.L., to Licking County Job and Family Services, but the appellate court affirmed the ruling. The children were removed in February 2023 after police found the parents behaving erratically at a gas station while under the influence of drugs, with narcotics, a loaded firearm, stolen identification cards, and other suspicious items in the vehicle. Both parents later faced criminal charges, and throughout the case the Agency developed reunification plans requiring substance abuse treatment, mental health services, parenting education, and stable housing and income. Although the parents completed some services and showed limited progress late in the case, the evidence demonstrated ongoing concerns regarding substance abuse, denial of responsibility, mental health issues, and failure to meaningfully remedy the conditions that led to removal. The children, who had lived with the same foster family for nearly three years, consistently expressed fear of returning home and wished to remain with their foster parents. The Guardian ad Litem also strongly supported permanent custody, citing the parents' continued denial of their problems and the emotional harm caused to the children. On appeal, the parents argued that the trial court improperly relied on evidence, that counsel was ineffective, that the Agency failed to provide records and reasonable reunification efforts, and that permanent custody was not supported by the evidence. The appellate court rejected all arguments, finding substantial evidence that the Agency made diligent reunification efforts, that the parents failed to substantially remedy the issues causing removal, and that permanent custody was in the children's best interests because it provided the stability, safety, and permanency the children needed.	Montgomery	5/18/2026
State v. Becker	25-COA-029	Appeal from the Ashland County Court of Common Pleas, Case No. 24-CRI-153	Affirmed	Merger Tony Becker appealed his convictions and consecutive ten-year prison sentence for two counts of sexual battery, arguing the trial court should have merged the offenses as allied offenses of similar import. The case involved two sexual assaults against a fifteen-year-old victim during a party at Becker's home. Becker pleaded guilty to two counts of sexual battery but did not request merger at sentencing, so the appellate court reviewed the issue only for plain error. The court affirmed the trial court's decision, holding the offenses did not merge because they were separate sexual acts committed separately in time, with separate animus and distinct harm to the victim. The court emphasized that Ohio law consistently recognizes different sexual acts during the same encounter as separate offenses that may be punished separately.	Popham	5/18/2026



Stark County Law Library
110 Central Plaza South, Suite 401, Canton, OH 44702
www.starkcountyohio.gov/law-library



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
State v. Green	2025 AP 09 0032	Appeal from the Tuscarawas County Court of Common Pleas, Case No. 2024 CR 12 0387	Reversed and Remanded	A sentence imposed under inapplicable statutory scheme is contrary to law Dustin Green challenged the indefinite prison sentence imposed by the Tuscarawas County Court of Common Pleas for rape and gross sexual imposition offenses committed between 2014 and 2017. Green originally faced charges including rape of a child under ten, but pursuant to a negotiated plea agreement in 2025, he pled guilty to amended charges that eliminated the possibility of a life sentence, and the parties jointly recommended an indefinite sentence of 15 to 20.5 years under the Reagan Tokes Law. After sentencing, the Ohio Department of Rehabilitation and Correction notified the court that the sentencing scheme may have been improperly applied because the offenses predated the Reagan Tokes Law's March 22, 2019 effective date. On appeal, the Fifth District Court of Appeals agreed, holding that the Reagan Tokes Law applies only prospectively to qualifying offenses committed on or after March 22, 2019, and that offenses committed before that date must receive definite prison terms under the prior statutory framework. The court found the trial court's use of an indefinite sentence was contrary to law and constituted plain error, noting that even a jointly recommended sentence cannot authorize an unlawful punishment or retroactive application of a harsher sentencing scheme. As a result, the appellate court reversed Green's sentence and remanded the case for a new sentencing hearing requiring the trial court to impose a definite prison term consistent with the statutes in effect when the offenses were committed.	Popham	5/20/2026
State v. Tuck	2025CA00079	Appeal from the Canton Municipal Court, Stark County , Ohio, Case No. 2025 TRC 00855	Affirmed	Guilty plea; Coerced; Coercion; Voluntarily; Knowingly; Intelligently; Waiver of right to jury trial; Written waiver Cortez Tuck challenged the Canton Municipal Court's acceptance of his no contest plea to an amended OVI charge, arguing that the trial court improperly denied him his constitutional right to a jury trial and coerced his plea. The record showed that Tuck failed to appear on time for his scheduled jury trial, arriving after the court had already issued a warrant and informed counsel that he would be taken into custody. The court explained that Tuck could either proceed with a jury trial the following Monday while remaining in custody over the weekend or accept the State's offer to amend the charge to a lower-tier OVI offense with reduced jail time and a delayed report date that would allow him to keep his job. After consulting extensively with counsel, Tuck chose to plead no contest, signed a written waiver of his constitutional rights, and confirmed in open court that he understood he was waiving his right to a jury trial. On appeal, the court held that the trial judge acted within his broad discretion in managing the courtroom and that Tuck voluntarily waived his jury trial rights. The appellate court further concluded that the plea was not coerced because the trial court repeatedly informed Tuck that he was free to proceed to trial and merely faced difficult choices rather than unlawful threats or coercion. Finding that the plea was entered knowingly, intelligently, and voluntarily, the court overruled both assignments of error and affirmed the judgment of the Canton Municipal Court.	Montgomery	5/20/2026
In re Robert J. Fox Revocable Trust	2026 CA 0008	Appeal from the Court of Common Pleas of Richland County , Probate Division, Case No. 2020 3010	Appeal Dismissed	The appeal of a trial court's order granting a stay is not a final and appealable order. Darin Avery, the trustee of the Robert H. Fox Revocable Trust, challenged a January 2026 probate court order partially staying proceedings related to the trust while a separate appeal concerning the trust beneficiaries remained pending. The underlying litigation began after the deaths of Robert H. Fox and his sons created uncertainty regarding the proper trust beneficiaries, leading the probate court in November 2025 to issue a declaratory judgment identifying beneficiaries and directing Avery to file accountings and distribute trust assets upon approval. Avery appealed that decision and later requested that the probate court stay enforcement of the judgment and all related trust proceedings during the appeal. The probate court granted the stay in part, halting distributions and expenditures of trust funds while still allowing beneficiaries to file exceptions to Avery's accountings. Avery argued the stay order effectively prevented him from carrying out his duties as trustee and therefore constituted a final appealable order. The appellate court disagreed, holding that orders granting or denying stays are generally not final appealable orders under R.C. 2505.02 because they merely postpone proceedings rather than determine substantive rights. The court further noted that Avery retained the ability to seek approval for necessary trust expenditures from the probate court. Because the January 2026 stay order did not affect a substantial right or otherwise qualify as a final appealable order, the appellate court dismissed the appeal for lack of jurisdiction.	Gormley	5/20/2026



Stark County Law Library
110 Central Plaza South, Suite 401, Canton, OH 44702
www.starkcountyohio.gov/law-library



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
In re Z.P.	2025 CA 00151 2025 CA 00152 2025 CA 00153 2025 CA 00156 2025 CA 00157 2025 CA 00158	Appeal from the Court of Common Pleas of Stark County , Family Court Division, Case Nos. 2023 JCV 00392 2023 JCV 00393 2023 JCV 00394	Affirmed	A trial court's judgment granting permanent custody of three children to the county's children's-services agency is affirmed. Mother Mercedes C. and Father Alonzo P. challenged the Stark County Family Court's decision granting permanent custody of their three children — Zo.P., Zu.P., and Zi.P. — to Stark County Job and Family Services. The appellate court affirmed the judgment, finding clear and convincing evidence supported the trial court's determination that permanent custody was in the children's best interests. The record showed a long history of Agency involvement stemming from concerns about Mother's untreated mental-health issues, domestic violence between the parents, instability, and inadequate care for the children. Although Mother partially complied with portions of her case plan, she failed to consistently address her mental-health and anger-management issues, stopped visiting the children in February 2024, and was found by a psychologist to be unsafe to parent. Father made even less progress, failed to complete required services, stopped visiting the children in March 2024, and was incarcerated on a felonious-assault conviction with an indefinite prison sentence. The children had been in Agency custody for more than two years and were thriving in a stable placement with their paternal grandmother in Louisiana, who wished to adopt them. The appellate court held that the evidence supported findings of abandonment and extended temporary custody, making reunification inappropriate. The court also rejected Father's procedural arguments, concluding he was not prejudiced by Mother's lack of counsel and that the trial court did not abuse its discretion in denying another continuance after prison officials again failed to facilitate Father's remote appearance at the hearing.	Gormley	5/20/2026
In re B.C.	25 CAF 07 0055	Appeal from the Delaware County Court of Common Pleas, Juvenile Division, Case No. 2303-0767-AB	Affirmed	Review of legal custody order Appellant Mother, A.N., appealed the decision of the Delaware County Juvenile Court granting legal custody of her daughter, B.C., to the child's father, J.C., arguing that the Delaware County Department of Job and Family Services failed to make reasonable efforts to reunify her with the child. The appellate court affirmed the judgment, finding substantial evidence that the agency acted reasonably and provided appropriate reunification services. The case began in 2023 after reports of abuse, emotional maltreatment, suicidal statements by Mother, and concerns that Mother suffered from Factitious Disorder by Proxy. Although B.C. was initially placed with relatives, she was later placed with Father, where her mental health significantly improved. Evidence showed Mother failed to comply with major portions of her case plan, including recommended Dialectical Behavior Therapy, substance-abuse treatment, and neurological evaluation, while continuing to test positive for cocaine and engaging in harmful "trauma talks" with B.C. despite professional warnings. Therapists, the CASA guardian ad litem, DCDJFS, and medical professionals all testified that visits with Mother were emotionally damaging and contributed to B.C.'s suicidal ideations and anxiety. In contrast, Father complied with his case plan, provided a stable home, and appropriately addressed B.C.'s mental-health needs. The appellate court concluded that DCDJFS developed and implemented an appropriate case plan and that Mother's failure to complete services — rather than any lack of effort by the agency — prevented reunification, so the trial court did not abuse its discretion in awarding legal custody to Father.	Montgomery	5/20/2026
State v. Berentz	25 CA 000034	Appeal from the Court of Common Pleas of Guernsey County , Case No. 25 CR 000063	Affirmed and Remanded	Though the State did not offer any explanation of the facts at a plea-change hearing, the trial court properly accepted the defendant's Alford pleas where the record included some police reports and other documents that not only explained the strength of the State's case had the case gone to trial on the original more serious charges but also detailed the facts supporting the defendant's Alford pleas to lesser charges. The case is remanded so the trial judge can orally provide to the defendant the indefinite-sentencing notificat The Fifth District Court of Appeals upheld Gary Berentz's convictions after concluding that the trial court properly accepted his Alford pleas to felonious assault and attempted abduction, despite Berentz's argument that the State failed to provide enough factual detail at the plea hearing. The court explained that, under an Alford plea, a defendant may maintain innocence while pleading guilty if the plea is knowingly, intelligently, and voluntarily made and the record contains strong evidence of guilt. Although the prosecutor only recited the statutory elements of the offenses at the plea hearing, the appellate court found the trial judge had sufficient information from the broader record in Berentz's related rape and retaliation cases, including investigative reports describing allegations that he forcibly assaulted one woman and unlawfully restrained another while making unwanted sexual advances. The court also noted that Berentz entered the pleas to avoid the risk of conviction on more serious charges carrying greater penalties. However, the appellate court agreed with Berentz that the trial court erred during sentencing by failing to orally provide the Reagan Tokes indefinite-sentencing advisements required under R.C. 2929.19(B)(2)(c). Although Berentz had received written notice earlier, Ohio law requires the trial judge to explain those provisions at the sentencing hearing itself. As a result, the appellate court affirmed the convictions but remanded the case for the limited purpose of providing the required oral indefinite-sentencing notifications.	Gormley	5/21/2026



Stark County Law Library
110 Central Plaza South, Suite 401, Canton, OH 44702
www.starkcountyohio.gov/law-library



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
State v. Scott	2025 CA 00093	Appeal from the Licking County Court of Common Pleas, Case No. 2012 CR 00280	Affirmed	Review of previously imposed fines, costs and fees The Fifth District Court of Appeals affirmed the trial court's decision denying Anthony Scott's request to waive court costs more than twelve years after his convictions for multiple felony offenses, including attempted murder, felonious assault, drug trafficking, and weapons charges. Although the trial court granted Scott's request to waive his mandatory fines and court-appointed attorney fees after reviewing his affidavit of indigency, it declined to waive prosecution costs and court costs. On appeal, Scott argued that the decision was arbitrary and violated his due process rights because the judge briefly instructed him to remain quiet when he attempted to speak during the hearing. The appellate court rejected those claims, finding that the trial court acted within its discretion under R.C. 2947.23, which permits but does not require waiver of court costs. The court further concluded that Scott was given an opportunity to speak and ask questions after the prosecutor addressed the court, but chose not to do so. Because the record showed the trial court considered Scott's financial circumstances and provided him an opportunity to be heard, the appellate court found no abuse of discretion or due process violation and affirmed the judgment.	Montgomery	5/21/2026
State v. Scott	2025 CA 00092	Appeal from the Licking County Court of Common Pleas, Case No. 2012 CR 00244	Affirmed	Review of previously imposed fines, costs and fees The Fifth District Court of Appeals affirmed the Licking County Court of Common Pleas' decision denying Anthony Scott's request to waive court costs imposed after his 2013 convictions for multiple felony offenses, including attempted murder, felonious assault, cocaine trafficking, and weapons charges. Although the trial court granted Scott's request to waive his mandatory fine and court-appointed attorney fees after reviewing his affidavit of indigency, it declined to waive prosecution costs and court costs. On appeal, Scott argued that the decision was arbitrary and that his due process rights were violated because the judge told him to "be quiet" when he attempted to speak during the hearing on his motion. The appellate court rejected those arguments, explaining that trial courts have broad discretion under R.C. 2947.23 to impose or waive court costs and that the record showed Scott was later given an opportunity to speak, ask questions, and present evidence but chose not to do so. The court found that the trial judge considered Scott's financial circumstances and acted within its discretion in refusing to waive court costs, and further concluded that Scott's due process rights were not violated. Accordingly, the appellate court affirmed the trial court's judgment.	Montgomery	5/21/2026
State v. Hinkle	2026 CA 00006	Appeal from the Licking County Court of Common Pleas, Case No. 2025 CR 00356	Affirmed	Maximum; Consecutive sentence The Fifth District Court of Appeals affirmed the eight-year prison sentence imposed on Bradley Hinkle following his guilty pleas to reduced third-degree felony charges of aggravated trafficking in drugs and tampering with evidence. Hinkle argued that the trial court improperly imposed maximum sentences and erred by ordering the sentences to run consecutively. The appellate court rejected both claims, finding that the thirty-six-month sentences for each offense were within the statutory range and that the trial court properly considered the purposes and principles of sentencing under R.C. 2929.11 and the seriousness and recidivism factors under R.C. 2929.12. The court noted that Hinkle had an extensive criminal history, a "very high" recidivism score, numerous probation and parole violations, and committed the offenses less than three months after being released from prison and while on post-release control for another methamphetamine trafficking conviction. The appellate court also found that the trial court made all findings required under R.C. 2929.14(C)(4) to impose consecutive sentences, including that consecutive terms were necessary to protect the public and punish Hinkle and were not disproportionate to his conduct. Because the sentencing findings were properly made at the hearing and incorporated into the sentencing entry, the appellate court affirmed the judgment of the Licking County Court of Common Pleas.	King	5/21/2026