

**THE COURT OF APPEALS OF OHIO**  
**SECOND APPELLATE DISTRICT**  
**CASE SUMMARIES**  
**October 25, 2024**

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's website at <http://www.supremecourt.ohio.gov/rod/docs/?source=2>.

Case Name: *State of Ohio v. Barry Bearadeno Pence II*  
Case No: Montgomery C.A. No. 30039; T.C. Case No. 2021 CR 03294  
Panel: Epley, Welbaum, Tucker  
Author: Michael L. Tucker  
Summary: Appellant's convictions for aggravated burglary, aggravated murder, and tampering with evidence were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not err in denying appellant's motion to suppress; the record demonstrates that appellant's waiver of his *Miranda* rights was knowing, voluntary and intelligent, and was not the product of coercion. The trial court did not abuse its discretion by ordering three evaluations of appellant's sanity at the time of the offenses. The record does not support a claim of ineffective assistance of counsel. The trial court did not err in sentencing. Judgment affirmed.

Case Name: *State of Ohio v. Jack Wooten*  
Case No: Clark C.A. No. 2024-CA-19;  
T.C. Case Nos. 23-CR-0717, 22-CR-0354  
Panel: Epley, Welbaum, Tucker  
Author: Michael L. Tucker  
Summary: At appellant's sentencing hearing, the trial court erred by not advising appellant of the possibility of post-release control (PRC) and the possible consequences of violating the terms of PRC. The trial court also erred by not calculating and informing appellant of his jail time credit at the sentencing hearing and including this information in its judgment entries. The State concedes these errors. Judgments reversed and remanded for resentencing on these issues only. In all other respects, judgments affirmed.

Case Name: *State of Ohio v. Gary Hayes*  
Case No: Montgomery C.A. No. 29968; T.C. Case No. 23-CRB-1525  
Panel: Tucker, Lewis, Huffman  
Author: Mary K. Huffman  
Summary: The trial court did not err in overruling appellant's Crim.R. 29 motion for acquittal on his domestic violence charge; there was sufficient evidence from which reasonable minds could have concluded that the victim was a household member of appellant. Judgment affirmed.

Case Name: *T.A. v. M.C.*  
Case No: Montgomery C.A. No. 30138; T.C. Case No. 2024 CV 02242  
Panel: Epley, Welbaum, Huffman  
Author: Mary K. Huffman  
Summary: Because appellant failed to file objections in the trial court to the granting of a civil stalking protection order, we are precluded from considering her arguments on appeal. Judgment affirmed.

Case Name: *In re Z.E.W. and M.C.W.*  
Case No: Greene C.A. Nos. 2024-CA-36; 2024-CA-37;  
T.C. Case Nos. 2021-I-00019-0G; 2024-I-00020-0G  
Panel: Epley, Welbaum, Huffman  
Author: Christopher B. Epley  
Summary: The juvenile court did not abuse its discretion when it found Mother in contempt for violating the summer parenting schedule in the parties' agreed order. The trial court also did not abuse its discretion in allowing Father to have one of the two child tax credits and reducing his child support payments because the children were no longer in daycare. Judgment affirmed.

Case Name: *FIG as Custodian for FIG OH18 LLC and Secured Party v. Dorian Jones, et al.*  
Case No: Montgomery C.A. No. 30104; T.C. Case No. 2021 CV 01168  
Panel: Epley, Welbaum, Tucker  
Author: Christopher B. Epley  
Summary: The trial court did not err in dismissing with prejudice appellant's foreclosure action as time-barred following the vacation of a default judgment due to lack of service and the subsequent successful service of appellee-homeowner. Judgment affirmed.

Case Name: *State of Ohio v. Ashlee Fletcher*  
Case No: Darke C.A. Nos. 2023-CA-23; 2023-CA-24;  
T.C. Case Nos. 22CR00306; 22CR00244  
Panel: Welbaum, Tucker, Lewis  
Author: Jeffrey M. Welbaum  
Summary: Appellant's convictions for gross abuse of a corpse and tampering

with evidence were supported by sufficient evidence. The trial court did not abuse its discretion by permitting the State to present evidence pertaining to a related murder investigation. Defense counsel did not provide ineffective assistance by failing to request an aiding and abetting jury instruction, as such a decision was a matter of trial strategy, which cannot form the basis of an ineffective assistance claim. Judgment affirmed in Darke C.P. No. 22CR00244, but we instruct the trial court to file a nunc pro tunc entry properly identifying the offenses of which appellant was convicted.

The trial court committed plain error by failing to instruct the jury on the essential element of recklessness at appellant's trial for endangering children. Judgment reversed in Darke C.P. No. 22CR00306 and remanded for a new trial.

Case Name:	<i>State of Ohio v. Paul Powell, Jr.</i>
Case No:	Clark C.A. No. 2024-CA-8; T.C. Case No. 23-CR-0488
Panel:	Epley, Welbaum, Tucker
Author:	Jeffrey M. Welbaum
Summary:	Appellant's claim that the State failed to present sufficient evidence establishing that the value of the ring he stole met the \$1,000 threshold for a felony-level theft offense is without merit; appellant's felony theft offense merged into his robbery offense, and a robbery conviction requires no evidence of the stolen property's value. Appellant's claim that there was insufficient evidence to support the trial court's award of \$3,500 in restitution for the victim's economic loss also lacks merit. The trial court was permitted to base the amount of restitution on the victim's testimony, which indicating that he had paid \$6,249.98 for the ring and had attempted to sell it for \$3,500. The trial court erred in failing to determine jail-time credit. Judgment affirmed in part and reversed in part; remanded for resentencing related to jail-time credit.