

COURT OF APPEALS OF OHIO, FIRST APPELLATE DISTRICT, HAMILTON
COUNTY

State v. Mounts

2026-Ohio-1443 · No. C-210608 · Decided April 22, 2026

SUMMARY

In this reopened criminal appeal, the Ohio First District Court of Appeals held that Joshua Mounts received ineffective assistance from both trial and appellate counsel. The court concluded that trial counsel performed deficiently by abandoning examination of a defense expert concerning histology slides, failing to object to certain expert testimony, and failing to object to a prosecutor's closing argument. The court vacated its prior appellate opinion, reversed Mounts's felony-murder conviction, and remanded the case for a new trial.

CASE DETAILS

COURT	Court of Appeals of Ohio, First Appellate District, Hamilton County
WRITING FOR THE COURT	Kinsley, Presiding Judge; Zayas, Judge; Crouse, Judge
JURISDICTION	Ohio Court of Appeals, First Appellate District, Hamilton County
DECIDED	April 22, 2026
DOCKET	C-210608
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Reopened criminal appeal under Ohio Appellate Rule 26(B), challenging the effectiveness of trial and original appellate counsel after the court had initially affirmed Mounts's felony-murder conviction.
STANDARD OF REVIEW	Ineffective-assistance claims are evaluated under the two-prong Strickland standard: deficient performance and resulting prejudice. Under App.R. 26(B)(9), the court may vacate its prior appellate judgment only upon finding that appellate counsel's performance was prejudicially deficient. The court assessed prosecutorial-misconduct comments for impropriety and prejudice to substantial rights, and assessed prejudice from counsel's errors cumulatively.
PRECEDENTIAL VALUE	published
PARTIES	Joshua Mounts v. State of Ohio

TOPICS

ineffective assistance appellate procedure expert testimony prosecutorial misconduct criminal procedure

PRACTICE AREAS

criminal procedure appellate procedure ineffective assistance of counsel criminal evidence
prosecutorial misconduct

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by abandoning defense expert Dr. Wiens's clarification that review of the original histology slide did not alter her opinion that the injury predated Mounts's care.
2. Whether trial counsel rendered ineffective assistance by failing to object to Dr. Makoroff's expert testimony when the State had not disclosed the expert report required by Crim.R. 16(K).
3. Whether trial counsel rendered ineffective assistance by failing to object to the prosecutor's closing argument asserting that eight additional, nontestifying doctors would have supported the State's theory.
4. Whether original appellate counsel rendered ineffective assistance by failing to raise trial counsel's ineffectiveness in Mounts's initial appeal.
5. Whether the remaining assignments concerning jury selection and fundamentally unreliable testimony required decision after the ineffective-assistance claims were sustained.

HOLDINGS

1. Trial counsel performed deficiently by abandoning Dr. Wiens's testimony that she had reviewed the original histology slide and that the review did not change her opinion that J.F.'s injuries were not recent.
2. Trial counsel performed deficiently by failing to object to Dr. Makoroff's expert testimony because the State had not disclosed the expert report required by Crim.R. 16(K), and her opinions exceeded permissible treating-physician testimony.
3. Trial counsel performed deficiently by failing to object to the prosecutor's unsupported assertion that eight additional doctors, who did not testify, would have supported the State's theory that J.F. suffered recent child-abuse trauma.
4. The cumulative effect of trial counsel's deficient performance created a reasonable probability that, absent the errors, the result of the trial would have been different and undermined confidence in the felony-murder verdict.
5. Original appellate counsel was constitutionally ineffective for failing to raise trial counsel's meritorious ineffective-assistance claims in Mounts's initial appeal; therefore, the court was required to vacate its prior appellate judgment and enter an appropriate judgment under App.R. 26(B)(9).

KEY QUOTATIONS

“If the court finds that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the court shall vacate its prior judgment and enter the appropriate judgment.” (¶ 31)

“Because the entire case rested on which cause-of-death theory the jury found more believable—that Mounts caused a blunt force head injury to J.F. or that J.F. had preexisting brain injuries that manifested in his loss of consciousness—Dr. Wiens’s credibility was critical to Mounts’s defense.” (¶ 42)

“Contrary to this principle, the prosecutor told the jury what eight additional expert witnesses would supposedly have said if they would have been called to testify. No evidence presented at trial supported this conclusion. This was improper.” (¶ 54)

“Here, the errors did not merely accumulate; they compounded one another, allowing the jury to hear misleading or undisclosed expert opinions while preventing the defense from fully presenting the only defense expert who reviewed the original histology slide.” (¶ 64)

FACTUAL BACKGROUND

Seven-month-old J.F. became unresponsive after spending the night solely in Mounts's care and was later diagnosed with a skull fracture and severe brain injuries. The State's theory was that J.F. suffered recent blunt-force trauma while in Mounts's care; Mounts relied on competing expert testimony that the injuries predated the overnight visit and could have resulted from prior medical conditions or other causes. The trial turned largely on competing expert opinions regarding the timing and cause of the injuries. The State also presented expert testimony from Dr. Makoroff without a disclosed expert report, and the prosecutor argued that eight additional doctors would have supported the State's theory even though they did not testify.

PROCEDURAL HISTORY

Mounts was charged with aggravated murder and felony murder arising from the death of his seven-month-old son. A jury acquitted him of aggravated murder but convicted him of felony murder, and the trial court imposed an aggregate sentence of 15 years to life. The First District initially affirmed the conviction in *State v. Mounts*, 2023-Ohio-3861. The court later granted Mounts's App.R. 26(B) application to reopen the appeal based on ineffective assistance of appellate counsel. In the reopened appeal, the court held that trial counsel was ineffective in three respects and that original appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness; it vacated the prior appellate judgment, reversed the conviction, and remanded for further proceedings and a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court vacated its prior judgment in the direct appeal, reversed Mounts's murder conviction and the trial court's judgment, and remanded for further proceedings consistent with the opinion and law, including a new trial.

CASES CITED

- State v. Mounts, 2023-Ohio-3861 (1st Dist.)
- State v. Clark, 2025-Ohio-4410
- State v. Stultz, 2023-Ohio-4754, ¶ 2 (9th Dist.)
- Strickland v. Washington, 466 U.S. 668 (1984)
- State v. Bradley, 42 Ohio St.3d 136 (1989)
- State v. Payne, 2019-Ohio-848, ¶ 8 (1st Dist.)
- State v. Smith, 17 Ohio St.3d 98, 100 (1985)
- State v. Gondor, 2006-Ohio-6679, ¶ 72
- State v. Hill, 75 Ohio St.3d 195, 212 (1996)
- State v. Clarke, 2024-Ohio-2921, ¶ 40 (1st Dist.)
- Hinton v. Alabama, 571 U.S. 263, 273 (2014)
- State v. Herring, 2014-Ohio-5228, ¶¶ 73-79, 80
- State v. Bunch, 2022-Ohio-4723, ¶¶ 34, 47
- State v. Boaston, 2020-Ohio-1061, ¶¶ 1, 44, 55, 65
- State v. Martin, 2024-Ohio-5332, ¶ 81 (7th Dist.)
- State v. Heller, 2019-Ohio-4722, ¶ 8 (9th Dist.)
- Henry v. Richardson, 2011-Ohio-2098, ¶ 33 (12th Dist.)
- State v. Fetty, 2012-Ohio-6127, ¶ 41 (11th Dist.)
- State v. Dean, 2015-Ohio-4347, ¶ 238
- State v. Ballew, 76 Ohio St.3d 244, 255 (1996)
- State v. Gilbert, 2011-Ohio-4340, ¶ 46 (12th Dist.)
- State v. Pino, 2008-Ohio-3578, ¶¶ 53-54, 57 (6th Dist.)
- State v. Junod, 2019-Ohio-743, ¶ 54 (3d Dist.)
- State v. Bellamy, 2022-Ohio-3698, ¶¶ 11-13
- State v. Leyh, 2022-Ohio-292, ¶¶ 22, 24