



THE SUPREME COURT *of* OHIO
SELECTED OPINION SUMMARIES

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THE SUPREME COURT *of* OHIO 2009



Paul E. Pfeifer ■ Chief Justice Thomas J. Moyer ■ Evelyn Lundberg Stratton
SEATED (LEFT TO RIGHT)

Judith Ann Lanzinger ■ Maureen O'Connor ■ Terrence O'Donnell ■ Robert R. Cupp
STANDING (LEFT TO RIGHT)



THE SUPREME COURT *of* OHIO

selected opinion
summaries

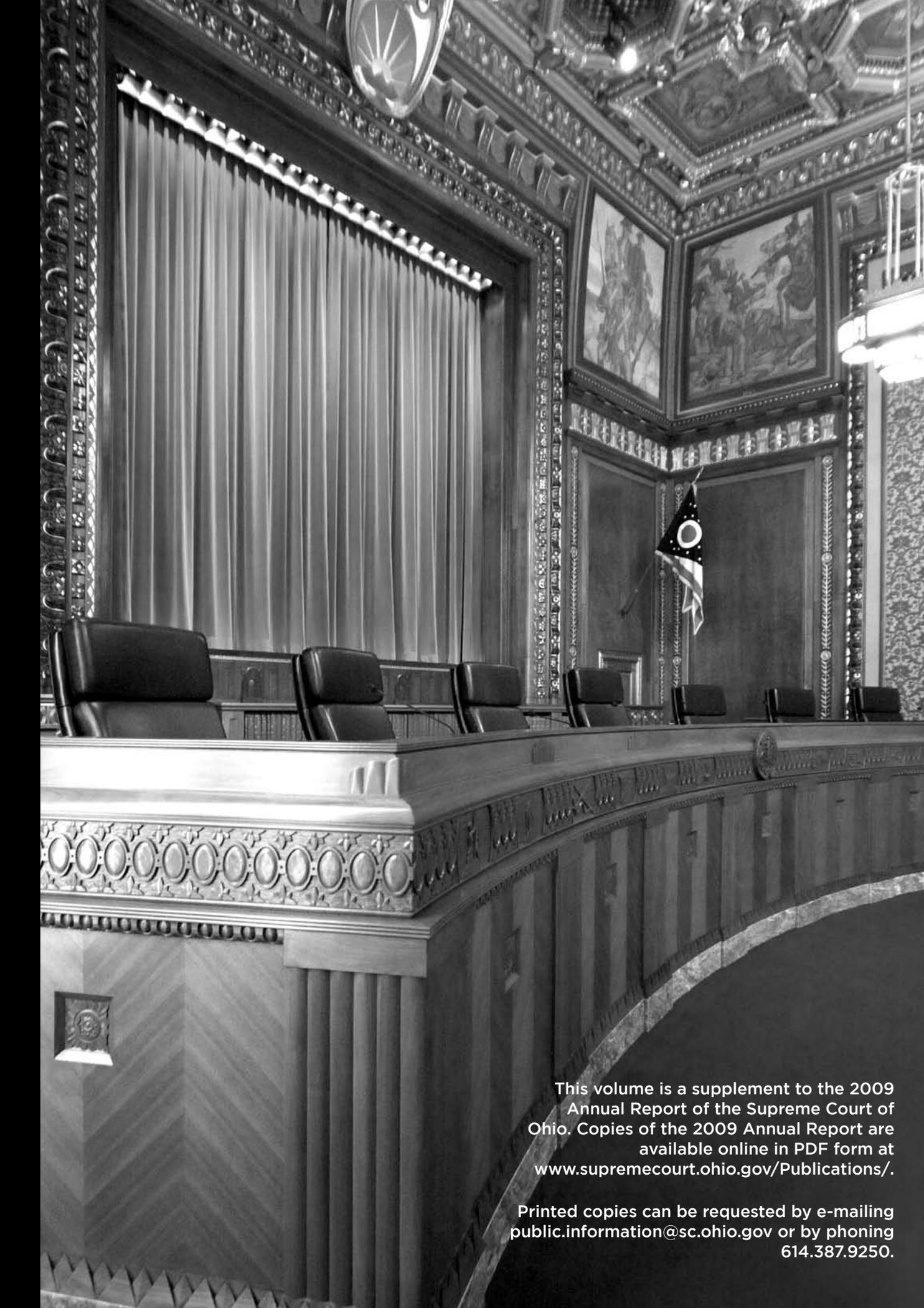
Thomas J. Moyer
CHIEF JUSTICE

Paul E. Pfeifer
Evelyn Lundberg Stratton
Maureen O'Connor
Terrence O'Donnell
Judith Ann Lanzinger
Robert R. Cupp
JUSTICES

Steven C. Hollon
ADMINISTRATIVE DIRECTOR

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selected opinion summaries 2009

This document contains a chronological compilation of the syllabi and summaries of the merit decisions with opinions decided by the Supreme Court of Ohio in 2009 that were summarized by the Office of Public Information.

Lawyer and judicial discipline cases are not included.

The full text of these and all 2009 opinions is available online at www.supremecourt.ohio.gov.

Majority opinion authors are indicated in boldface. The abbreviation, “C.J.,” stands for “Chief Justice,” while “JJ.” stands for “Justices.”

editor’s note: At the time this 2009 Opinion Summaries document was going to press, the people of Ohio experienced the untimely and tragic loss of Chief Justice Thomas J. Moyer, who died unexpectedly on April 2, 2010, after serving as the leader of Ohio’s judicial branch for nearly 24 years.

Because this piece documents opinions of the Supreme Court of Ohio through 2009, during all of which Chief Justice Moyer was still in office, none of the content was altered.

january

Martin v. Design Constr. Servs., Inc.

Case nos. 2007-2023 & 2007-2024

Web cite 2009-Ohio-1

SYLLABUS: In an action based on temporary injury to noncommercial real estate, a plaintiff need not prove diminution in the market value of the property in order to recover the reasonable costs of restoration, but either party may offer evidence of diminution of the market value of the property as a factor bearing on the reasonableness of the cost of restoration.

Summit App. No. 23422, 2007-Ohio-4805. Certified question answered in the negative, and judgment of the trial court reversed.

Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Casserlie v. Shell Oil Co.

Case no. 2007-1408

Web cite 2009-Ohio-3

SYLLABUS: When a price that has been left open in a contract is fixed at a price posted by a seller or buyer, and the posted price is both commercially reasonable and nondiscriminatory, the price setter has acted in good faith as required by the Ohio Uniform Commercial Code in R.C. 1302.18(B), and a subjective inquiry into the motives of the price setter is not permitted.

Cuyahoga App. No. 88361, 2007-Ohio-2633. Judgment affirmed.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., concurs in judgment only

Pfeifer, J., dissents.

State v. D.H.

Case nos. 2007-0291 and 2007-0472

Web cite 2009-Ohio-9

SYLLABUS: (1) R.C. 2152.13(D)(2)(a)(i), which requires a juvenile court judge to consider certain factors before imposing a serious-youthful-offender dispositional sentence, does not violate the Sixth Amendment to the United States Constitution or Sections 5 and 10, Article I of the Ohio Constitution. (2) Constitutional jury trial rights do not apply, in a pre-Foster sentencing, to findings that a juvenile court has made under Ohio's adult felony sentencing statutes when the juvenile court imposes the stayed adult portion of a serious-youthful-offender dispositional sentence pursuant to R.C. 2152.13.

Franklin App. No. 06AP-250, 169 Ohio App.3d 798, 2006-Ohio-6953.

Certified question answered in the negative, and judgment affirmed.

Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, and Carr, JJ., concur.

Lanzinger, J., concurs in judgment only.

Donna J. Carr, J., of the 9th Appellate District, sitting for Cupp, J.

february

State v. Pasqualone

Case no. 2007-2443

Web cite 2009-Ohio-315

SYLLABUS: (1) An attorney may waive a client's Sixth Amendment right to confrontation. (2) When the state has complied with its obligations regarding evidence in drug-offense cases under R.C. 2925.51, a defendant's failure to use the procedures of R.C. 2925.51(C) to demand that a laboratory analyst testify constitutes a waiver of the opportunity to cross-examine the analyst at trial and allows the analyst's report to be admitted

as prima facie evidence of the test results.

Ashtabula App. No. 2007-A-0005, 2007-Ohio-6725. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Moyer, C.J., and Lundberg Stratton, **O'Connor**, O'Donnell, Lanzinger, and Dinkelacker, JJ., concur. Pfeifer, J., concurs in judgment only. Patrick Dinkelacker, J., of the 1st Appellate District, sitting for Cupp, J.

State v. Thompson

Case no. 2007-2389

Web cite 2009-Ohio-314

SYLLABUS: For purposes of penalty enhancement in later convictions under R.C. 4511.19, the statute regarding operating a vehicle while under the influence of alcohol or drugs, after the defendant presents a prima facie showing that the prior convictions were unconstitutional because the defendant had not been represented by counsel and had not validly waived the right to counsel and that the prior convictions had resulted in confinement, the burden shifts to the state to prove that the right to counsel was properly waived. (*State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, paragraph one of the syllabus, explained.)

Fairfield App. No. 2007-CA-00006, 2007-Ohio-6098. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Moyer, C.J., and **Pfeifer**, O'Connor, Lanzinger, and Cupp, JJ., concur. Lundberg Stratton and O'Donnell, JJ., concur in judgment only.

State v. Jones

Case nos. 2007-2310 and 2007-2311

Web cite 2009-Ohio-316

SYLLABUS: A law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution, regarding search and seizure rights. (*State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, followed.)

Stark App. No. 2007-CA-00139, 2007-Ohio-5818, and Stark App. No. 2007-CA-00098, 2007-Ohio-5817.

Judgments of the court of appeals reversed, and judgments of the trial court reinstated.

Moyer, C.J., and Lundberg Stratton, **O'Connor**, Lanzinger, and Cupp, JJ., concur.

Pfeifer and O'Donnell, JJ., concur separately.

In re J.F.

Case no. 2007-2239

Web cite 2009-Ohio-318

SYLLABUS: A court may order a juvenile to serve a previously suspended commitment after probation supervision has been terminated when the juvenile violates a separate, unexpired condition of community control.

Greene App. No. 06-CA-123, 2007-Ohio-5652. Judgment affirmed and cause remanded to the trial court.

Moyer, C.J., and O'Connor, O'Donnell, and Cupp, JJ., concur. Pfeifer, Lundberg Stratton, and Lanzinger, JJ., dissent.

Louden v. A.O. Smith Corp.
Case nos. 2007-1819 and 2007-1821
Web cite 2009-Ohio-319
SYLLABUS: Unless a local rule of the appellate court, properly approved under Sup.R. 27, expressly permits filing a notice of appeal by electronic means, a party appealing a trial court order must file a paper copy of the notice of appeal with the clerk of the trial court pursuant to App.R. 3.
Cuyahoga App. Nos. 90184 and 90185. Judgment affirmed.
Moyer, C.J., and **Lundberg Stratton**, O'Connor, O'Donnell, and Cupp, JJ., concur.
Lanzinger, J., concurs in part and dissents in part.
Pfeifer, J., dissents.

State v. Bartrum
Case no. 2007-2193
Web cite 2009-Ohio-355
SYLLABUS: Under former R.C. 2907.21(A)(3) (now R.C. 2907.21(A)(3)(a)), a defendant may not be convicted of compelling prostitution without the existence of an actual minor whom the defendant paid or agreed to pay.
Summit App. No. 23549, 2007-Ohio-5410. Judgment affirmed.
Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, **Lanzinger**, and Cupp, JJ., concur.
O'Donnell, J., dissents.

Thorton v. Montville Plastics & Rubber, Inc.
Case no. 2007-1588
Web cite 2009-Ohio-360
SYLLABUS: The provisions in 2006 Am.Sub.S.B. No. 7 apply prospectively, except that the provisions amending R.C. 4123.512(H), regarding appealing workers' compensation cases in court, apply retroactively.

Geauga App. No. 2006-G-2744, 2007-Ohio-3475. Judgment affirmed.
Moyer, C.J., and Pfeifer, **O'Connor**, Lanzinger, and Cupp, JJ., concur.
Lundberg Stratton and O'Donnell, J., dissent.

In re L.A.B.
Case nos. 2007-0895 and 2007-0912
Web cite 2009-Ohio-354
SYLLABUS: A probation revocation hearing is an adjudicatory hearing, which is held to determine whether a child is delinquent as defined by R.C. 2152.02(F)(2); therefore, both Juv.R. 29, setting forth the procedure for adjudicatory hearings, and Juv.R. 35(B), setting forth the procedure for the revocation of probation, are applicable to the hearing.

Summit App. No. 23309, 2007-Ohio-1479. Certified question answered in the affirmative, judgment reversed, and cause remanded to the trial court.
Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, and **Lanzinger**, JJ., concur.
O'Donnell and Cupp, JJ., dissent.

State ex rel. Cincinnati Enquirer v. Heath
Case no. 2008-1250
Web cite 2009-Ohio-590
SUMMARY: Reverses a court of appeals ruling that held moot the Cincinnati Enquirer's request for an order compelling common pleas judges to vacate orders sealing certain records in a criminal case and to make the records available for inspection and copying in accordance with the Public Records Act; remands case for further proceedings.

Warren App. No. CA2008-03-046. Judgment reversed and cause remanded.
Per curiam. Moyer, C.J., and

Pfeifer, Lundberg Stratton,
O'Connor, O'Donnell, Lanzinger,
and Cupp, JJ., concur.

State v. Brewer

Case no. 2007-1755

Web cite 2009-Ohio-593

SYLLABUS: When evidence admitted at trial is sufficient to support a conviction, but on appeal, some of that evidence is determined to have been improperly admitted, the Double Jeopardy Clauses of the United States and Ohio Constitutions will not bar retrial. (*Lockhart v. Nelson* (1988), 488 U.S. 33, 109 S.Ct. 285, 102 L.Ed.2d 265, followed.)

Cuyahoga App. No. 87701,
2007-Ohio-4291. Judgment affirmed
and cause remanded to the trial
court.

Pfeifer, Lundberg Stratton,
O'Connor, **O'Donnell**, and Cupp, JJ.,
concur.

Moyer, C.J., and Lanzinger, J.,
dissent.

march

State v. Nucklos

Case no. 2007-0754

Web cite 2009-Ohio-792

SYLLABUS: To convict a licensed health professional of trafficking in drugs under R.C. 2925.03(A), the state bears the burden of proving beyond a reasonable doubt the inapplicability of the licensed-health-professional exception in R.C. 2925.03(B)(1) by submitting evidence that the licensed health professional violated statutes or regulations that define the standard of care for dispensing controlled substances. (R.C. 2925.03(B)(1), construed.)

Clark App. No. 06CA0023, 171
Ohio App.3d 38, 2007-Ohio-1025.

Judgment affirmed.

Moyer, C.J., and Pfeifer, **Lundberg
Stratton**, O'Connor, O'Donnell, and
Lanzinger, JJ., concur.

Cupp, J., concurs in judgment only.

State v. Coburn

Case no. 2008-0536

Web cite 2009-Ohio-834

SYLLABUS: A state wildlife officer may enter private land pursuant to R.C. 1531.13 when he or she has good cause to believe that a law is being violated, and may enter private land pursuant to R.C. 1531.14 without good cause when acting in the normal, peaceful, and lawful pursuit of the enforcement of laws relating to game and fish.

Erie App. Nos. E-07-049, E-07-050,
and E-07-051, 176 Ohio App.3d 600,
2008-Ohio-371. Judgment affirmed.

Moyer, C.J., and Pfeifer, Lundberg
Stratton, O'Connor, Lanzinger, and
Cupp, JJ., concur.

O'Donnell, J., concurs separately.

State v. Winn

Case no. 2007-1842

Web cite 2009-Ohio-1059

SYLLABUS: The crime of kidnapping, defined by R.C. 2905.01(A)(2), and the crime of aggravated robbery, defined by R.C. 2911.01(A)(1), are allied offenses of similar import pursuant to R.C. 2941.25.

Montgomery App. No. 21710, 173
Ohio App.3d 202, 2007-Ohio-4327.
Judgment affirmed.

Pfeifer, Lundberg Stratton,
O'Donnell, and **Lanzinger**, JJ.,
concur.

Moyer, C.J., and O'Connor and
Cupp, JJ., dissent.

Mandelbaum v. Mandelbaum

Case nos. 2007-2422 and 2008-0375

Web cite 2009-Ohio-1222

SYLLABUS: (1) Although R.C. 3105.18(F), the statute in relation to domestic relations law, sets forth a partial listing of what can be considered as a change of circumstances to include “any increase or involuntary decrease in the party’s wages, salary, bonuses, living expenses, or medical expenses” for purposes of establishing trial court jurisdiction, it does not alter the requirement that a trial court must find a substantial change in circumstances before modifying a prior order for spousal support. (2) A trial court lacks jurisdiction to modify a prior order of spousal support unless the decree of the court expressly reserved jurisdiction to make the modification and unless the court finds (1) that a substantial change in circumstances has occurred and (2) that the change was not contemplated at the time of the original decree.

Montgomery App. No. 21817, 2007-Ohio-6138. Judgment affirmed and cause remanded to the trial court.

Moyer, C.J., and Lundberg Stratton, O’Connor, **O’Donnell**, Lanzinger, and Cupp, JJ., concur.

Pfeifer, J., concurs in judgment only.

Walburn v. Dunlap

Case nos. 2007-2150 and 2007-2302

Web cite 2009-Ohio-1221

SYLLABUS: An appellate court order that declares that an insured is entitled to coverage but does not address damages is not a final order as defined in R.C. 2505.02(B) (2), regarding appellate court procedures, because the order does not affect a substantial right even though made in a special proceeding.

Vinton App. No. 06CA655, 2007-Ohio-5398. Judgment reversed and cause remanded to the trial court.

Moyer, C.J., and **Lundberg Stratton**, O’Connor, O’Donnell, Lanzinger, and Cupp, JJ., concur.

Pfeifer, J., dissents and would dismiss the cause as having been improvidently accepted and certified.

Torchik v. Boyce

Case no. 2008-0534

Web cite 2009-Ohio-1248

SYLLABUS: An independent contractor whose negligence is alleged to have caused injury to police officers or firefighters acting in the scope of their official duties is not relieved of potential liability under the fireman’s rule that immunizes property owners from civil liability for injuries suffered by public safety officers who enter their property while on duty.

Ross App. No. 06CA2921, 2008-Ohio-399. Judgment reversed and cause remanded to the trial court.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O’Connor, O’Donnell, **Lanzinger**, and Cupp, JJ., concur.

Minno v. Pro-Fab, Inc.

Case no. 2008-0170

Web cite 2009-Ohio-1247

SYLLABUS: A corporation’s veil may not be pierced in order to hold a second corporation liable for the corporate misdeeds of the first when the two corporations have common individual shareholders but neither corporation has any ownership interest in the other corporation.

Trumbull App. No. 2007-T-0021, 2007-Ohio-6565. Judgment reversed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O’Connor, O’Donnell, Lanzinger, and **Cupp**, JJ., concur.

Moore v. Lorain Metro. Hous. Auth.
Case nos. 2007-2106 and 2008-0030
Web cite 2009-Ohio-1250

SYLLABUS: The operation of a public housing authority is a governmental function under R.C. 2744.01 (C) (2) for purposes of political subdivision immunity under R.C. Chapter 2744.

Lorain App. No. 06CA008995,
2007-Ohio-5111. Judgment reversed
and cause remanded to the trial
court.

Moyer, C.J., and Lundberg Stratton,
O'Connor, and **Lanzinger, JJ.**,
concur.

Pfeifer, J., concurs in judgment only.
O'Donnell, J., concurs in part and
dissents in part.

Cupp, J., dissents.

Crawford-Cole v. Lucas Cty.
Dept. of Job & Family Servs.
Case no. 2008-0462

Web cite 2009-Ohio-1355
SYLLABUS: R.C. 119.07, which establishes
a 30-day time period in which to request
a hearing on an agency determination,
applies only to state agencies. Ohio
Adm.Code 5101:2-14-40, which sets forth
a 10-day period in which to request a
hearing on a county's action concerning
the certification of a type B family day-
care home, applies to county agencies.

Lucas App. No. L-07-1188, 174
Ohio App.3d 617, 2008-Ohio-359.
Judgment reversed and cause
remanded.

Moyer, C.J., and Pfeifer, Lundberg
Stratton, O'Connor, **O'Donnell**,
Lanzinger, and Cupp, JJ., concur.

State v. Rivas
Case no. 2007-1611
Web cite 2009-Ohio-1354

SYLLABUS: Pursuant to a Crim.R.
16(B) (1) (c) discovery request, when
a prosecutor has provided a written
transcript that purports to accurately

reflect data stored on a computer
hard drive, a court may not order an
examination of the computer hard drive
unless the defense makes a prima facie
showing that the state has provided false,
incomplete, adulterated, or spoliated
evidence.

Greene App. No. 05-CA-147, 172
Ohio App.3d 473, 2007-Ohio-3593.
Judgment reversed.

Lundberg Stratton, O'Connor,
O'Donnell, and Lanzinger, JJ.,
concur.

Moyer, C.J., and Pfeifer and Cupp,
JJ., dissent.

Doe v. Marlinton Local School Dist.
Bd. of Edn.

Case no. 2007-1304
Web cite 2009-Ohio-1360

SYLLABUS: The exception to political
subdivision immunity in R.C. 2744.02(B)
(1) for "negligent operation of any
motor vehicle" does not encompass
supervision of the conduct of the
passengers of the vehicle.

Stark App. No. 2006CA00102,
2007-Ohio-2815. Judgment affirmed.
Moyer, C.J., and Lundberg Stratton,
O'Donnell, Lanzinger, and **Cupp, JJ.**,
concur.

Pfeifer, J., dissents.

O'Connor, J., dissents without
opinion.

april

Estate of Stevic v. Bio-Medical
Application of Ohio, Inc.

Case no. 2008-0392
Web cite 2009-Ohio-1525

SYLLABUS: For the purposes of the
R.C. 2305.113(A) one-year statute of
limitations, a "medical claim" under
R.C. 2305.113(E) (3) is a claim that both
arises out of the medical diagnosis,
care, or treatment of any person and

is asserted against one or more of the statutorily enumerated medical providers.

Richland App. No. 2006 CA 0095, 2008-Ohio-33. Judgment affirmed and cause remanded to the trial court.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp, JJ.**, concur.

Sogg v. Zurz

Case no. 2007-1452

Web cite No. 2009-Ohio-1526

SUMMARY: Concludes that the first sentence of R.C. 169.08(D), the statute regarding unclaimed funds, which provides that “[i]nterest is not payable to claimants of unclaimed funds held by the state,” is unconstitutional.

Franklin App. No. 06AP-883, 2007-Ohio-3219. Judgment reversed and cause remanded to the trial court.

Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., concurs in judgment only.

State v. Silverman

Case no. 2008-0582

Web cite 2009-Ohio-1576

SYLLABUS: A hearsay statement of a child declarant can be admitted under Evid.R. 807 without a determination of the child's competence to testify. (*State v. Said* (1994), 71 Ohio St.3d 473, 644 N.E.2d 337, limited.)

Montgomery App. No. 22097, 176 Ohio App.3d 12, 2008-Ohio-618. Judgment reversed, and judgment of the trial court reinstated.

Lundberg Stratton, **O'Connor**, O'Donnell, and Cupp, JJ., concur. Moyer, C.J., and Pfeifer and Lanzinger, JJ., dissent.

State v. Boswell

Case no. 2007-2373

Web cite 2009-Ohio-1577

SYLLABUS: A motion to withdraw a plea of guilty or no contest made by a defendant who has been given a void sentence must be considered as a presentence motion under Crim.R. 32.1.

Cuyahoga App. Nos. 88292 and 88293, 2007-Ohio-5718. Cause remanded to the trial court for further proceedings.

Moyer, C.J., and Pfeifer, O'Connor, O'Donnell, and Cupp, JJ., concur. Lundberg Stratton and Lanzinger, JJ., dissent.

State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.

Case no. 2008-1570

Web cite 2009-Ohio-1767

SUMMARY: Denies request for writ of mandamus to compel a port authority to provide access to both an investigative report prepared by a law firm on the port authority's behalf and the associated documentation reviewed by the attorneys to prepare the report because the report is excepted from disclosure under the Public Records Act by attorney-client privilege, and the port authority previously provided access to the requested additional documentation.

In Mandamus. Writ denied.

Per curiam. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

New 52 Project, Inc. v. Proctor

Case no. 2008-0574

Web cite 2009-Ohio-1766

SYLLABUS: R.C. Chapter 5511 gives the director of transportation the exclusive authority to abandon or vacate portions of the state highway system. Therefore, a court of common pleas has

no jurisdiction to decide whether an easement for a state highway has been abandoned.

Franklin App. No. 07AP-487, 2008-Ohio-465. Judgment reversed, and judgment of the trial court reinstated.

Moyer, C.J., and **Lundberg Stratton**, O'Connor, O'Donnell, and Cupp, JJ., concur.
Pfeifer and Lanzinger, JJ., dissent.

may

Sullivan v. Anderson Twp.

Case nos. 2008-0691 and 2008-0817

Web cite 2009-Ohio-1971

SYLLABUS: R.C. 2744.02(C) permits a political subdivision to appeal a trial court order that denies it the benefit of an alleged immunity from liability under R.C. Chapter 2744, which addresses political subdivision tort liability, even when the order makes no determination pursuant to Civ.R. 54(B).

Hamilton App. No. C-070253, 2008-Ohio-1438. Certified question answered in the affirmative, judgment of the court of appeals reversed, and cause remanded.

Moyer, C.J., and **Lundberg Stratton**, O'Connor, O'Donnell, and Cupp, JJ., concur.

Pfeifer and Lanzinger, JJ., dissent.

Eppley v. Tri-Valley

Local School Dist. Bd. of Edn.

Case no. 2008-0366.

Web cite 2009-Ohio-1970

SYLLABUS: The saving statute for wrongful death actions, R.C. 2125.04, does not violate the right to equal protection of the law under the Fourteenth Amendment to the United States Constitution and Section 2, Article I of the Ohio Constitution.

Muskingum App. No. CT2007-0022, 2008-Ohio-32. Judgment reversed.

Moyer, C.J., and **Lundberg Stratton**, O'Connor, O'Donnell, **Lanzinger**, and Cupp, JJ., concur.

Pfeifer, J., dissents.

Hayes v. Oakridge Home

Case no. 2008-0784

Web cite 2009-Ohio-2054

SYLLABUS: (1) An arbitration agreement voluntarily executed by a nursing-home resident upon her admission and not as a precondition to admission is not rendered procedurally unconscionable solely by virtue of the resident's age. (2) An arbitration agreement voluntarily executed by a nursing-home resident and not as a precondition to admission that waives the right to trial and the right to seek punitive damages and attorney fees is not substantively unconscionable.

Cuyahoga App. No. 89400, 175

Ohio App.3d 334, 2008-Ohio-787.

Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Moyer, C.J., and **O'Connor**, O'Donnell, and Cupp, JJ., concur.
Lundberg Stratton and **Lanzinger**, JJ., concur in judgment only.

Pfeifer, J., dissents.

Medcorp, Inc.

v. Ohio Dept. of Job & Family Servs.

Case nos. 2008-0584 and 2008-0630

Web cite 2009-Ohio-2058

SYLLABUS: To satisfy the "grounds of the party's appeal" requirement in R.C. 119.12, which addresses state government administrative procedure, parties appealing under that statute must identify specific legal or factual errors in their notices of appeal. NOTE: On reconsideration, Court clarifies decision is to be applied only to cases filed on or after June 1, 2009.

Franklin App. No. 07AP-312, 2008-Ohio-464. Certified question answered in the affirmative, judgment of the court of appeals reversed, and cause dismissed for lack of jurisdiction.

Moyer, C.J., and O'Connor, Lanzinger, and Cupp, JJ., concur. Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent.

Olympic Holding Co., L.L.C. v. ACE Ltd.
Case no. 2008-0200

Web cite 2009-Ohio-2057

SYLLABUS: (1) The breach of an oral promise to sign an agreement does not remove the agreement from the signing requirement of the statute of frauds.

(2) A party may not use promissory estoppel to bar the opposing party from asserting the affirmative defense of the statute of frauds, which requires that an enforceable contract must be in writing and signed by the party to be charged. (3) Damages for promissory estoppel are an adequate remedy for the breach of an oral promise, absent a signed agreement. (4) A joint-venture agreement that does not comply with the statute of frauds is unenforceable, and an unenforceable joint-venture agreement cannot impose any fiduciary duties on the parties. (*Garg v. Venkataraman* (1988), 54 Ohio App.3d 171, 561 N.E.2d 1005, approved; *Al Johnson Constr. Co. v. Kosydar* (1975), 42 Ohio St.2d 29, 71 O.O.2d 16, 325 N.E.2d 549, distinguished.)

Franklin App. No. 07AP-168, 2007-Ohio-6643. Judgment of the court of appeals reversed, and cause remanded to the trial court. **Moyer**, C.J., and **Lundberg Stratton**, O'Connor, Lanzinger, and Cupp, JJ., concur. Pfeifer and O'Donnell, JJ., dissent.

june

Meyer v. United Parcel Serv., Inc.

Case no. 2008-0315

Web cite 2009-Ohio-2463

SYLLABUS: (1) An age-discrimination claim brought pursuant to R.C. 4112.99 is subject to the substantive provisions of R.C. 4112.02 and 4112.14. (2) Pursuant to R.C. 4112.14(C), when the discharge of an employee has been arbitrated and the discharge has been found to be for just cause, the discharged employee is barred from pursuing an action for age discrimination.

Hamilton App. No. C-060772, 174 Ohio App.3d 339, 2007-Ohio-7063.

Judgment reversed, and cause remanded to the trial court.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp**, JJ., concur. Pfeifer, J., dissents.

Med. Mut. of Ohio v. Schlotterer

Case no. 2008-0598

Web cite 2009-Ohio-2496

SYLLABUS: A patient's consent to the release of medical information is valid, and waives the physician-patient privilege, if the release is voluntary, express, and reasonably specific in identifying to whom the information is to be delivered.

Cuyahoga App. No. 89388, 2008-Ohio-49. Judgment reversed, and cause remanded to the trial court.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur. Pfeifer, J., concurs in part and dissents in part.

Lang v. Holly Hill Motel, Inc.

Case nos. 2007-1222 and 2007-1370

Web cite 2009-Ohio-2495

SYLLABUS: The open-and-obvious doctrine may be asserted as a defense to a claim of liability arising from a violation of the Ohio Basic Building Code.

Jackson App. No. 06CA18, 2007-Ohio-3898. Certified question answered in the negative and judgment affirmed.

Moyer, C.J., and Lundberg Stratton, O'Donnell, and Cupp, JJ., concur. O'Connor and Lanzinger, JJ., concur in judgment only. Pfeifer, J., dissents.

Corrigan v. Illum. Co.

Case no. 2008-0708

Web cite 2009-Ohio-2524

SUMMARY: Reverses court of appeals judgment affirming court of common pleas order granting injunctive relief to land owners against utility company seeking to remove tree from property.

Cuyahoga App. No. 89402, 175 Ohio App.3d 360, 2008-Ohio-684. Judgment reversed.

Moyer, C.J., and Lundberg Stratton, O'Connor, and Lanzinger, JJ., concur. Pfeifer, O'Donnell, and Cupp, JJ., dissent.

State ex rel. Cordray

v. Midway Motor Sales, Inc.

Case no. 2008-1451

Web cite 2009-Ohio-2610

SYLLABUS: (1) R.C. 4549.46(A), statute regarding motor vehicle crimes, incorporates the odometer disclosure requirements set forth in motor vehicle title law through R.C. 4505.06, and is not a strict-liability statute. Liability can be imposed only if it is established that the defendant knowingly violated the statute. (2) The previous-owner

exception found in R.C. 4549.46(A) applies to a transferor regardless of when a previous owner tampered with the odometer.

Franklin App. No. 07AP-744, 2008-Ohio-2799. Judgment reversed, and cause remanded to the trial court.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Lima v. State

Case nos. 2008-0128 and 2008-0418

Web cite 2009-Ohio-2597

SUMMARY: Concludes that R.C. 9.481, which addresses residency requirements for certain employees, is unconstitutional and that municipalities cannot require their employees to reside in a particular municipality other than as provided in R.C. 9.481(B)(2)(b).

Allen App. No. 1-07-21, 177 Ohio App.3d 744, 2007-Ohio-6419, and Summit App. No. 23660, 2008-Ohio-38. Judgments reversed. **Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.**

Moyer, C.J., and Lanzinger, J., dissent.

Spiller v. Sky Bank – Ohio Bank Region

Case no. 2008-0900

Web cite 2009-Ohio-2682

SYLLABUS: When an action on an account against a bank is based on or depends on the contents of records that the bank is required to maintain, the action must be asserted within the time provided by R.C. 1109.69 for retention of those records, even when the account at issue is an automatically renewing certificate of deposit.

Logan App. No. 8-07-03, 2008-Ohio-1338. Judgment reversed and cause dismissed.

Moyer, C.J., and Lundberg Stratton,

O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Pfeifer, J., dissents.

State ex rel. Dillard Dept. Stores v. Ryan

Case no. 2007-2225

Web cite 2009-Ohio-2683

SYLLABUS: A second voluntary dismissal under Civ.R. 41(A)(1)(a) by an employee-claimant filed after the parties had agreed to settle a claim in an employer-initiated workers' compensation appeal pursuant to R.C. 4123.512 is not a final judicial determination that payments made to the employee should not have been made, when the court of common pleas has not entered judgment to that effect.

Franklin App. No. 06AP-726, 173 Ohio App.3d 339, 2007-Ohio-5556. Judgment affirmed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

State v. Clinkscale

Case no. 2008-1012

Web cite 2009-Ohio-2746

SYLLABUS: (1) The proceedings in which a deliberating juror is dismissed in a capital case, and an alternate juror is seated, must be recorded. (2) Under former Crim.R. 24(G)(2), a juror cannot be replaced by an alternate juror during deliberations in a capital case.

Franklin App. No. 06AP-1109, 177 Ohio App.3d 294, 2008-Ohio-1677. Judgment reversed and cause remanded.

Moyer, C.J., and Pfeifer, O'Connor, and **Lanzinger**, JJ., concur.
Lundberg Stratton, O'Donnell, and Cupp, JJ., dissent.

Sheet Metal Workers' Internatl. Assn., Local Union No. 33 v. Gene's Refrigeration, Heating & Air Conditioning, Inc.

Case no. 2008-0780

Web cite 2009-Ohio-2747

SYLLABUS: (1) A labor organization that obtains written authorization to represent one employee does not have standing as an "interested party" under R.C. 4115.03(F), statute regarding wages and hours on public works, to pursue violations of the prevailing-wage law on behalf of any other employee on the project. (2) R.C. 4115.05 applies only to persons whose work is performed directly on the site of the public improvement project. (*Clymer v. Zane* (1934), 128 Ohio St. 359, 191 N.E. 123, approved and followed.)

Medina App. No. 06CA0104-M, 2008-Ohio-1005. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Moyer, C.J., and **Lundberg Stratton**, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Pfeifer, J., dissents.

Northwestern Ohio Bldg. & Constr. Trades Council v. Ottawa Cty. Improvement Corp.

Case no. 2008-1069

Web cite 2009-Ohio-2957

SYLLABUS: The prevailing-wage law applies only when a public authority, including an institution, spends public funds to construct a "public improvement," which by definition must be constructed by a public authority or must benefit a public authority. (R.C. 4115.03, construed.)

Ottawa App. No. OT-07-017, 2008-Ohio-1852. Judgment affirmed.
Moyer, C.J., and Pfeifer, **Lundberg Stratton**, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Alexander

v. Wells Fargo Financial Ohio I, Inc.

Case nos. 2008-0905 and 2008-1009

Web cite 2009-Ohio-2962

SUMMARY: Reverses court of appeals holding that mandatory arbitration agreements do not apply to statutory claims for delay in recording the satisfaction of loans and discharge of mortgages.

Cuyahoga App. No. 89277, 2008-Ohio-1402, and Cuyahoga App. No. 89311, 2008-Ohio-1403. Judgments reversed. Case No. 2008-0905 is remanded to the court of appeals, and case No. 2008-1009 is remanded to the trial court. Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, **Lanzinger**, and Cupp, JJ., concur. Pfeifer, J., dissents.

State v. Trimble

Case no. 2005-2436

Web cite 2009-Ohio-2961

SUMMARY: Upholds aggravated murder conviction and death sentence of James Trimble for the 2005 shooting deaths of three people.

Portage C.P. No. 2005 CR 0022. Judgment affirmed. **Moyer**, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur. Pfeifer, J., concurs separately.

july

Cordray v. Planned Parenthood

Cincinnati Region

Case no. 2008-1234

Web cite 2009-Ohio-2972

SYLLABUS: The plain language of R.C. 2919.123, regarding the unlawful distribution of an abortion-inducing drug, mandates that physicians providing mifepristone to patients for

the purpose of inducing an abortion do so in accordance with the FDA drug approval letter and the final printed labeling it incorporates, including compliance with the 49-day gestational limitation and the treatment protocols and dosage indications expressly approved by the FDA.

Certified Questions of State Law, United States Court of Appeals for the Sixth Circuit, Nos. 06-4422 and 06-4423. Certified questions answered in the affirmative. Lundberg Stratton, **O'Donnell**, and Cupp, JJ., concur. Moyer, C.J., concurs in syllabus and judgment. O'Connor and Lanzinger, JJ., concur in part and dissent in part. Pfeifer, J., dissents.

Roe v. Planned Parenthood

Southwest Ohio Region

Case no. 2007-1832

Web cite 2009-Ohio-2973

SYLLABUS: (1) The balancing test in *Biddle v. Warren Gen. Hosp.* (1999), 86 Ohio St.3d 395, 715 N.E.2d 518, applies only as a defense to the tort of unauthorized disclosure of confidential medical information and does not create a right to discover confidential medical records of nonparties in a private lawsuit. (*Biddle v. Warren Gen. Hosp.*, clarified.) (2) R.C. 2151.421(M), law regarding the reporting of child abuse or neglect by an official or professional, affects a substantive right, and its retroactive application would violate due process. (3) In the absence of statutory authority, punitive damages are not available under former R.C. 2151.421.

Hamilton App. No. C-060557, 173 Ohio App.3d 414, 2007-Ohio-4318. Judgment affirmed. Moyer, C.J., and **Lundberg Stratton**, Lanzinger, and Cupp, JJ., concur. Pfeifer and O'Donnell, JJ., concur in

part and dissent in part.
Donovan, J., dissents.
Mary E. Donovan, J., of the 2nd
Appellate District, sitting for
O'Connor, J.

State v. Evans

Case no. 2008-0363

Web cite 2009-Ohio-2974

SYLLABUS: (1) Robbery as defined in R.C. 2911.02(A)(2) is a lesser included offense of aggravated robbery as defined in R.C. 2911.01(A)(1). (2) In determining whether an offense is a lesser included offense of another, a court shall consider whether one offense carries a greater penalty than the other, whether some element of the greater offense is not required to prove commission of the lesser offense, and whether the greater offense as statutorily defined cannot be committed without the lesser offense as statutorily defined also being committed. (*State v. Deem* (1988), 40 Ohio St.3d 205, 533 N.E. 2d 294, clarified.)

Cuyahoga App. No. 89057,
2008-Ohio-139. Judgment reversed
and conviction reinstated.
Moyer, C.J., Lundberg Stratton,
O'Connor, **O'Donnell**, and
Lanzinger, JJ., concur.
Pfeifer, J., concurs in judgment.
Cupp, J., concurs in judgment and
paragraph one of the syllabus.

State v. Harris

Case no. 2007-1812

Web cite 2009-Ohio-3323

SYLLABUS: (1) Robbery defined in R.C. 2911.02(A)(2) and aggravated robbery defined in R.C. 2911.01(A)(1) are allied offenses of similar import, and therefore a defendant cannot be convicted of both offenses when both are committed with the same animus against the same victim. (2) Felonious assault defined in R.C. 2903.11(A)(1) and felonious assault

defined in R.C. 2903.11(A)(2) are allied offenses of similar import, and therefore a defendant cannot be convicted of both offenses when both are committed with the same animus against the same victim. (*State v. Cotton*, 120 Ohio St.3d 321, 2008-Ohio-6249, 898 N.E.2d 959, followed.)

Hamilton App. No. C-060587.
Judgment reversed and cause
remanded to the trial court.
Lundberg Stratton, O'Connor,
O'Donnell, and Cupp, JJ., concur.
Moyer, C.J., and Pfeifer and
Lanzinger, JJ., concur in part and
dissent in part.

Greenspan v. Third Fed. S. & L. Assn.

Case no. 2008-1568

Web cite 2009-Ohio-3508

SYLLABUS: (1) A private right of action for the unauthorized practice of law did not exist before September 15, 2004. (2) The Supreme Court of Ohio has exclusive jurisdiction over the practice of law in Ohio, including the unauthorized practice of law.

Cuyahoga App. No. 89850, 177
Ohio App.3d 372, 2008-Ohio-3528.
Judgment of the court of appeals
reversed, and judgment of the trial
court reinstated.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, Lanzinger,
and Cupp, JJ., concur.
Pfeifer, J., dissents and would
affirm the judgment of the court of
appeals.

Williams

v. Spitzer Autoworld Canton, L.L.C.

Case no. 2008-1337

Web cite 2009-Ohio-3554

SYLLABUS: (1) To the extent that Ohio Adm.Code 109:4-3-16(B)(22) conflicts with the parol evidence rule as codified by R.C. 1302.05 and allows parol evidence contradicting the final written

contract, Ohio Adm.Code 109:4-3-16(B) (22) constitutes an unconstitutional usurpation of the General Assembly's legislative function and is therefore invalid. (2) The parol evidence rule applies to actions brought pursuant to the Consumer Sales Practices Act, and absent proof of fraud, mistake, or other invalidating cause, a consumer may not present extrinsic evidence contradicting the parties' final written contract to prove a violation of that act.

Stark App. No. 2007 CA 00187, 2008-Ohio-2535. Judgment reversed. Moyer, C.J., and Lundberg Stratton, O'Connor, **O'Donnell**, and Cupp, JJ., concur. Pfeifer, J., concurs in judgment only. Lanzinger, J., concurs in syllabus paragraph 2 and judgment only.

State v. Harrison

Case no. 2008-0331

Web cite 2009-Ohio-3547

SUMMARY: Reverses court of appeals judgment affirming convictions of former Wapakoneta chief of police, stating once defendant has served original sentence, trial court cannot resentence him to impose postrelease control.

Madison App. No. CA2006-08-028, 2007-Ohio-7078. Judgment reversed. Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, and Trapp, JJ., concur. O'Donnell and Lanzinger, JJ., concur in judgment only. Mary Jane Trapp, J., of the 11th Appellate District, sitting for Cupp, J.

State v. Elmore

Case no. 2007-0475

Web cite 2009-Ohio-3478

SYLLABUS: (1) Resentencing pursuant to State v. Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, for offenses that occurred prior to February

27, 2006, does not violate the Sixth Amendment right to a jury trial or the Ex Post Facto or Due Process Clauses of the United States Constitution. (2) A trial court, upon resentencing pursuant to Foster, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, has discretion to impose consecutive sentences and, despite the Foster severance of statutory presumptions, is not required by the rule of lenity to impose a minimum prison term.

Licking C.P. No. 02 CR 275.

Judgment affirmed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, **Lanzinger**, and Cannon, JJ., concur. Timothy P. Cannon, J., of the 11th Appellate District, sitting for Cupp, J.

Natl. Union Fire Ins. Co.

of Pittsburgh, PA v. Wuerth

Case no. 2008-1334

Web cite 2009-Ohio-3601

SYLLABUS: (1) A law firm does not engage in the practice of law and therefore cannot directly commit legal malpractice. (2) A law firm may be vicariously liable for legal malpractice only when one or more of its principals or associates are liable for legal malpractice.

Certified Question of State Law, United States Court of Appeals for the Sixth Circuit, No. 07-4035.

Certified question of state law answered in the negative.

Moyer, C.J., and DeGenaro, O'Connor, **O'Donnell**, and Cupp, JJ., concur.

Pfeifer and Lanzinger, JJ., concur in the concurring opinion of Moyer, C.J.

Mary DeGenaro, J., of the 7th Appellate District, sitting for Lundberg Stratton, J.

*Cincinnati City School Dist. Bd. of Edn.
v. State Board of Edn.*

Case no. 2008-1480

Web cite 2009-Ohio-3628

SUMMARY: Reverses judgment of court of appeals and judgment of trial court that city of Cincinnati School District Board of Education is not eligible under statute for an award of attorney fees.

Hamilton App. No. C-070494, 176

Ohio App.3d 678, 2008-Ohio-2845.

Judgment reversed, and judgment of the trial court reinstated.

Moyer, C.J., and **Lundberg Stratton**,

O'Connor, O'Donnell, Lanzinger,

and Cupp, JJ., concur.

Pfeifer, J., dissents.

Niskanen v. Giant Eagle, Inc.

Case no. 2008-0895

Web cite 2009-Ohio-3626

SYLLABUS: (1) Punitive damages are available in negligence actions only if compensatory damages are awarded. (R.C. 2315.21(C)(1) and (2), regarding trial procedure law, applied.) (2) The issue of whether self-defense applies to a particular tort claim is to be determined on a case-by-case basis by examining whether the evidence supports the defense; there is no per se rule against asserting self-defense in negligence actions.

Summit App. No. 23445,

2008-Ohio-1385. Judgment reversed,

and judgment of the trial court reinstated.

Moyer, C.J., and Lundberg Stratton,

O'Connor, O'Donnell, Lanzinger,

and Cupp, JJ., concur.

Pfeifer, J., dissents.

august

Safeco Ins. Co. of Am. v. White

Case nos. 2008-0304 and 2008-0403

Web cite 2009-Ohio-3718

SYLLABUS: (1) When a liability insurance

policy defines an "occurrence" as an "accident," a negligent act committed by an insured that is predicated on the commission of an intentional tort by another person, e.g., negligent hiring or negligent supervision, qualifies as an "occurrence." (2) Insurance-policy exclusions that preclude coverage for injuries expected or intended by an insured, or injuries arising out of or caused by an insured's intentional or illegal acts, do not preclude coverage for the negligent actions of other insureds under the same policy that are predicated on the commission of those intentional or illegal acts, e.g., negligent hiring or negligent supervision.

Hamilton App. No. C-070074,

2007-Ohio-7068. Judgment affirmed.

Moyer, C.J., and Pfeifer, O'Connor,

and Lanzinger, JJ., concur.

Cupp, J., concurs separately.

Lundberg Stratton and O'Donnell,

JJ., concur in part and dissent in

part.

State ex rel. Doe v. Smith

Case no. 2008-2471

Web cite 2009-Ohio-4149

SUMMARY: In an appeal and cross-appeal granting a writ of mandamus seeking the production of certain records, affirms court of appeals judgment awarding attorney fees and statutory damages. Reverses court of appeals judgment awarding litigation expenses beyond filing fee. Dismisses cross-appeal as moot.

Clermont App. No. CA2008-01-006.

Judgment affirmed in part and reversed in part, and cross-appeal dismissed in part.

Per curiam. Moyer, C.J., and

Lundberg Stratton, O'Connor,

O'Donnell, Lanzinger, and Cupp, JJ.,

concur.

Pfeifer, J., dissents and would

reverse the judgment of the court of appeals.

State v. Hunter

Case no. 2008-0661

Web cite 2009-Ohio-4147

SYLLABUS: (1) *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, excised judicial fact-finding from former R.C. 2929.14(D)(2) but did not eliminate the repeat violent offender specification, as defined in former R.C. 2929.01(DD). (2) When designating an offender as a “repeat violent offender” pursuant to former R.C. 2929.01(DD), a trial court does not violate the Sixth Amendment by considering relevant information about the offender’s prior conviction that is part of the judicial record. (*Shepard v. United States* (2005), 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205, followed.)

Cuyahoga App. No. 89456, 2008-Ohio-794. Judgment affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O’Connor, **O’Donnell**, Lanzinger, and Cupp, JJ., concur.

Youngstown v. Traylor

Case no. 2008-1460

Web cite 2009-Ohio-4184

SYLLABUS: Youngstown Codified Ordinances 505.19 is rationally related to the city’s legitimate interest in protecting citizens from vicious dogs and therefore is constitutional.

Mahoning App. No. 07 MA 102, 2008-Ohio-2971. Judgment reversed, and judgment of the trial court reinstated. Moyer, C.J., and **Lundberg Stratton**, O’Connor, O’Donnell, and Cupp, JJ., concur. Pfeifer and Lanzinger, JJ., dissent.

september

Ohio Grocers Assn. v. Levin

Case no. 2008-2018

Web cite 2009-Ohio-4872

SUMMARY: Reverses judgment of court of appeals and holds the Commercial

Activity Tax is not an unconstitutional excise tax on the sale or purchase of food.

Franklin App. No. 07AP-813, 178 Ohio App.3d 145, 2008-Ohio-4420. Judgment reversed. Moyer, C.J., and Lundberg Stratton, **O’Connor**, O’Donnell, Lanzinger, and Cupp, JJ., concur. Pfeifer, J., dissents.

State ex rel. Perrea v. Cincinnati Pub. Schools

Case no. 2008-0748

Web cite 2009-Ohio-4762

SUMMARY: Denies writ of mandamus to compel a public school district to provide copies of semester examinations administered to ninth-grade students in January 2007, because the school district met its burden to establish that the requested examinations are excepted from disclosure under the Public Records Act.

In Mandamus. Writ denied. Pfeifer, Lundberg Stratton, O’Donnell, **Lanzinger**, and Cupp, JJ., concur. Moyer, C.J., and O’Connor, J., concur in part and dissent in part.

State ex rel. LetOhioVote.org v. Brunner

Case no. 2009-1310

Web cite 2009-Ohio-4900

SYLLABUS: The video-lottery-terminal provisions of 2009 Am.Sub.H.B. No. 1 do not fall within any of the exceptions to the right of referendum in that they are neither laws providing for tax levies, nor appropriations for the current expenses of the state government, nor emergency laws necessary for the immediate preservation of the public peace, health, or safety. Therefore, they are subject to referendum.

In Mandamus. Writ granted. Moyer, C.J., and Lundberg Stratton, O’Connor, **O’Donnell**, Lanzinger, and Cupp, JJ., concur. Pfeifer, J., dissents.

State v. Cargile

Case no. 2008-1452

Web cite 2009-Ohio-4939

SYLLABUS: A person who is taken to a detention facility after his arrest and who possesses a drug of abuse at the time he enters the facility meets the actus reus requirement for a violation of R.C. 2921.36(A)(2), law that addresses illegal weapons or drugs on detention facility grounds.

Cuyahoga App. No. 89964, 2008-Ohio-2783. Judgment reversed and cause remanded.

Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp**, JJ., concur.

Benton v. Hamilton Cty.

Educational Serv. Ctr.

Case nos. 2008-1946 and 2008-1949

Web cite 2009-Ohio-4969

SYLLABUS: Refusal of the Industrial Commission to discontinue a claim does not involve the right of the claimant to participate in the workers' compensation fund under R.C. 4123.512, and thus, a court of common pleas lacks subject matter jurisdiction on appeal.

Hamilton App. No. C-070223, 2008-Ohio-4272. Certified question is answered in the negative, the judgment of the court of appeals is reversed, and the cause is dismissed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, and **Lanzinger**, JJ., concur.

O'Donnell and Cupp, JJ., concur in judgment only.

State v. Hoover

Case no. 2007-2295

Web cite 2009-Ohio-4993

SYLLABUS: R.C. 4511.19(A)(2), law regarding operating a vehicle under the influence of drugs or alcohol, does not violate the Fourth Amendment to the

United States Constitution or Section 14, Article I of the Ohio Constitution.

Union App. No. 14-07-11, 173

Ohio App.3d 487, 2007-Ohio-5773.

Judgment affirmed in part and reversed in part.

Lundberg Stratton, O'Connor, **Lanzinger**, and Cupp, JJ., concur. Moyer, C.J., and Pfeifer and O'Donnell, JJ., dissent.

october

Oliver v. Cleveland Indians Baseball Co.

Ltd. Partnership

Case no. 2008-1463

Web cite 2009-Ohio-5030

SYLLABUS: The limit on noneconomic compensatory damages in R.C. 2744.05(C)(1), political subdivision tort liability law, does not violate the right to a jury trial or the right to equal protection under the law.

Cuyahoga App. Nos. 89314, 89428, and 89463, 176 Ohio App.3d 410, 2008-Ohio-2183. Judgment of the court of appeals reversed, and cause remanded to the trial court.

Moyer, C.J., and Lundberg Stratton, O'Connor, Lanzinger, and Cupp, JJ., concur.

Pfeifer, J., dissents with opinion. O'Donnell, J., dissents for the reasons stated in his dissenting opinion in *Arbino v. Johnson & Johnson*.

State ex rel. Husted v. Brunner

Case no. 2009-1707

Web cite 2009-Ohio-5327

SUMMARY: Grants a writ of mandamus compelling the Montgomery County Board of Elections to treat Jon A. Husted as a Montgomery County resident for election purposes.

In Mandamus. Writ granted.

Per curiam. Lundberg Stratton,

O'Connor, O'Donnell, and Cupp, JJ., concur.
Moyer, C.J., concurs in Part II(C) of the opinion and in judgment.
Pfeifer, J., concurs in judgment only.
Lanzinger, J., concurs in Part II(B) of the opinion and in judgment.

State v. Futrall

Case no. 2008-2391

Web cite 2009-Ohio-5590

SYLLABUS: When an applicant with multiple convictions under one case number moves to seal his or her criminal record in that case pursuant to R.C. 2953.32, law regarding sealing of conviction record, and one of those convictions is exempt from sealing pursuant to R.C. 2953.36, the trial court may not seal the remaining convictions.

Lorain App. No. 08CA009388, 2008-Ohio-5654. Judgment affirmed.
Pfeifer, **Lundberg Stratton**, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Moyer, C.J., concurs separately.

Sisk & Assoc., Inc. v. Commt. to Elect Timothy Grendell

Case no. 2008-1265

Web cite 2009-Ohio-5591

SYLLABUS: When a plaintiff files an instruction for a clerk to attempt service of a complaint that was filed more than a year prior, the instruction by operation of law is a notice dismissal of the claims, and if the plaintiff had previously filed a notice dismissing a complaint making the same claim, the instruction by operation of law is a second notice dismissal, resulting in dismissal with prejudice of the claims. (*Goolsby v. Anderson Concrete Corp.* (1991), 61 Ohio St.3d 549, 575 N.E.2d 801, and *Olynky v. Scoles*, 114 Ohio St.3d 56, 2007-Ohio-2878, 868 N.E.2d 254, construed and applied.)

Franklin App. No. 07AP-1002, 2008-Ohio-2342. Judgment reversed.

Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, and Lanzinger, JJ., concur.
Cupp, J., concurs in judgment only.

november

State v. McCausland

Case no. 2008-2415

Web cite 2009-Ohio-5933

SYLLABUS: A criminal defendant waives the Sixth Amendment right to present a closing argument when he or she neither requests a closing argument nor objects to its omission.

Butler App. No. CA2007-10-254, 2008-Ohio-5660. Judgment affirmed.
Moyer, C.J., and Pfeifer, **Lundberg Stratton**, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

State ex rel. Cincinnati Enquirer v. Ronan

Case no. 2009-0696

Web cite 2009-Ohio-5947

SUMMARY: Affirms court of appeal dismissal as moot a complaint for a writ of mandamus to compel Cincinnati Public Schools Superintendent to provide copies of all documents submitted by prospective superintendent candidates pursuant to the Public Records Act; reverses portion of court of appeals judgment dismissing as moot request for attorney fees and remands cause for further proceedings on the request.

Hamilton App. No. C-090155. Judgment affirmed in part and reversed in part, and cause remanded.

Per curiam. Moyer, C.J., and O'Connor, Lanzinger, and Cupp, JJ., concur.
Pfeifer, Lundberg Stratton, and O'Donnell, JJ., concur in part and dissent in part.

Mynes v. Brooks

Case no. 2009-0054

Web cite 2009-Ohio-5946

SYLLABUS: R.C. 2711.02(C), law regarding court arbitration, permits a party to appeal a trial court order that grants or denies a stay of trial pending arbitration, even when the order makes no determination pursuant to Civ.R. 54(B).

Scioto App. No. 07CA3185, 2008-Ohio-5613. Certified question answered in the affirmative, judgment reversed, and cause remanded.

Moyer, C.J., and Lundberg Stratton, O'Connor, and Cupp, JJ., concur. Pfeifer and Lanzinger, JJ., dissent. O'Donnell, J., dissents and would affirm the judgment of the court of appeals.

State v. Robinson

Case nos. 2008-1942 and 2008-2170

Slip Opinion No. 2009-Ohio-5937

SYLLABUS: The damaging of a single private telephone or cellular telephone disrupts public services in violation of R.C. 2909.04(A) (3), law regarding the disruption of public services, if the conduct substantially impairs the ability of law-enforcement officers, firefighters, rescue personnel, emergency-medical-services personnel, or emergency-facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

Union App. No. 14-07-20, 177

Ohio App.3d 560, 2008-Ohio-4160.

Certified question answered in the affirmative, judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Moyer, C.J., and Pfeifer, Lundberg Stratton, **O'Connor**, O'Donnell, Lanzinger, and Cupp, JJ., concur.

december

State v. Perez

Case no. 2005-2364

Web cite 2009-Ohio-6179

SUMMARY: Affirms death sentence of Kerry Perez for March 2003 shooting death of Ronald Johnson during the robbery of a Springfield bar.

Clark C.P. No. 03-CR-1010. Judgment affirmed.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp**, JJ., concur.

Pfeifer, J., concurs in part and dissents in part.

Mayer v. Medancic

Case nos. 2008-2363 and 2009-0170

Web cite 2009-Ohio-6190

SYLLABUS: (1) Because R.C. 1343.02, Ohio Uniform Commercial Code regarding payment of interest, does not provide for it, compound interest is not available upon a default on a written instrument absent agreement of the parties or another statutory provision expressly authorizing it. (2) The simple interest that accrues after a default on a written instrument under R.C. 1343.02 accrues on both the principal and the interest that was due and payable at the time of the default.

Geauga App. Nos. 2008-G-2826, 2008-G-2827, and 2008-G-2828,

2008-Ohio-5531. Certified question answered in the negative, judgment of the court of appeals reversed, and cause remanded to the trial court.

Moyer, C.J., and Lundberg Stratton, **O'Connor**, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Pfeifer, J., concurs in judgment only.

State v. Smith

Case no. 2008-1781

Web cite 2009-Ohio-6426

SYLLABUS: The warrantless search of data within a cell phone seized incident to a lawful arrest is prohibited by the Fourth Amendment when the search is unnecessary for the safety of law-enforcement officers and there are no exigent circumstances.

Greene App. No. 07-CA-47, 2008-Ohio-3717. Judgment of the court of appeals reversed, and cause remanded to the trial court. Moyer, C.J., and Pfeifer, O'Connor, and **Lanzinger, JJ.**, concur. Lundberg Stratton, O'Donnell, and Cupp, JJ., dissent.

State v. Singleton

Case no. 2008-1255

Web cite 2009-Ohio-6434

SYLLABUS: (1) For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall conduct a de novo sentencing hearing in accordance with decisions of the Supreme Court of Ohio. (2) For criminal sentences imposed on and after July 11, 2006, in which a trial court failed to properly impose postrelease control, trial courts shall apply the penalties and sentencing procedures set forth in R.C. 2929.191.

Cuyahoga App. No. 90042, 2008-Ohio-2351. Judgment affirmed. **O'Donnell** and Cupp, JJ., concur. Moyer, C.J., and Pfeifer and O'Connor, JJ., concur in the judgment, paragraph one of the syllabus, and the portion of the opinion addressing the retrospective application of R.C. 2929.191 but dissent as to paragraph two of the syllabus and the portion of the opinion addressing the prospective application of R.C. 2929.191. Lundberg Stratton and Lanzinger,

JJ., concur in paragraph two of the syllabus but dissent from the judgment and paragraph one of the syllabus and would instead reverse the judgment of the court of appeals and hold that R.C. 2929.191 also applies retrospectively.

Util. Serv. Partners, Inc. v. Pub. Util. Comm.
Case no. 2008-1507

Slip Opinion No. 2009-Ohio-6764

SUMMARY: Affirms PUCO order making Columbia Gas of Ohio Inc. responsible for the repair and replacement of hazardous natural gas service lines.

Public Utilities Commission, No. 07-478-GA-UNC. Order affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp, JJ.**, concur

Natl. Solid Wastes Mgt. Assn.

v. Stark-Tuscarawas-Wayne

Joint Solid Waste Mgt. Dist.

Case No. 2009-0211

Slip Opinion No. 2009-Ohio-6765

SYLLABUS: The director of the Ohio Environmental Protection Agency is not a necessary party who must be joined in a suit challenging the validity of local rules adopted by a solid-waste-management district.

Stark App. No. 2008CA00011, 2008-Ohio-6585. Judgment reversed and cause remanded. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, **O'Donnell**, Lanzinger, and Cupp, JJ., concur.

about the cover



The cover of the 2009 Selected Opinion Summaries features a fresh interpretation of the Ohio Judicial Center's signature room. Wreathed with historical murals, the Courtroom is appointed with walnut and granite and adorned with heavy brocades and velvets. While popular, the dark beauty of the room often can elude the camera's eye.

Columbus award-winning artist Corey B. Lucius (pictured, left) used watercolor illustrations to capture the Courtroom's beauty. Lucius, who also works in oil portraits and landscapes, is an intern in the Supreme Court Office of Public Information. He is a senior at the Columbus College of Art & Design pursuing a bachelor of fine arts degree.



THE SUPREME COURT *of* OHIO

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