

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

March 2, 2005

[Cite as *03/02/2005 Case Announcements, 2005-Ohio-763.*]

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## MERIT DECISIONS WITH OPINIONS

**2003-0433 through 2003-0445. DAK, PLL v. Franklin Cty. Bd. of Revision, 2005-Ohio-573.**

Board of Tax Appeals, Nos. 2002-A-1933 through 2002-A-1945. Decisions affirmed.

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

Pfeifer, J., concurs in judgment only.

**2004-0664. Evans v. Wallen, 2005-Ohio-571.**

Montgomery App. No. 20171, 2004-Ohio-1166. Judgment reversed and cause remanded.

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

Resnick and Pfeifer, JJ., dissent.

**2004-0675. State ex rel. Arce v. Indus. Comm., 2005-Ohio-572.**

Franklin App. No. 03AP-595, 2004-Ohio-1277. Judgment affirmed.

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

**2004-1396. Borger v. Utica Mut. Ins. Co., 2005-Ohio-570.**

Montgomery App. No. 20213, 2004-Ohio-3782. Judgment reversed.

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

Resnick and Pfeifer, JJ., dissent.

**2004-1495. Motorists Mut. Ins. Co. v. Hohman, 2005-Ohio-569.**

Shelby App. No. 17-04-03, 2004-Ohio-3899. Judgment reversed.

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

Resnick and Pfeifer, JJ., dissent.

**MERIT DECISIONS WITHOUT OPINIONS**

**2004-2029. Votewatch Corp. v. Franklin Cty. Bd. of Elections.**

In Mandamus. On answers of respondents Fairfield County Board of Elections, Franklin County Board of Elections, Lorain County Board of Elections, Mahoning County Board of Elections, and Van Wert County Board of Elections; motion of respondent Fairfield County Board of Elections for judgment on the pleadings; motion of respondent J. Kenneth Blackwell to dismiss; and motion of relator for partial summary judgment as to respondent Fairfield County Board of Elections. Motion for judgment on the pleadings sustained. Motion to dismiss sustained. Motion for partial summary judgment denied. Cause dismissed.

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

Pfeifer, J., dissents and would grant an alternative writ.

**2004-2085. State ex rel. Ruff v. Wilkinson.**

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed. Motion to amend complaint denied as moot.

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

**2004-2105. State ex rel. Ham v. Court of Appeals, Seventh Appellate Dist.**

In Mandamus and Prohibition. On motions to dismiss. Motions to dismiss sustained. Cause dismissed.

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

**2004-2127. Carter v. Rudduck.**

In Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

**2005-0063. Lang v. State.**

In Habeas Corpus. On petition for writ of habeas corpus of Adam Lang. Sua sponte, cause dismissed.

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

**2005-0082. State v. Moore.**

Cuyahoga App. No. 83703, 2004-Ohio-6303. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

Moyer, C.J., Resnick, Pfeifer, O'Donnell and Lanzinger, JJ., concur.

Lundberg Stratton and O'Connor, JJ. would accept and hold the cause for the decisions in 2004-1171, *State v. Mathis*, Cuyahoga App. No. 83311, 2004-Ohio-2982, and 2004-1267, *State v. Fair*, Cuyahoga App. No. 82278, 2004-Ohio-2971.

**2005-0128. Avery v. Money.**

In Habeas Corpus. On petition for writ of habeas corpus of Edward B. Avery, Sr. Sua sponte, cause dismissed.

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

## **MOTION AND PROCEDURAL RULINGS**

**2001-0871. State v. Ahmed.**

Belmont C.P. No. 99-CR-192. On motion for leave to amend, and on application for reopening under S.Ct.Prac.R. XI(6). Motions denied because the appellant failed to comply with the 90-day filing deadline in S.Ct.Prac.R. XI(6)(A).

Pfeifer, J., dissents.

**2001-0871. State v. Ahmed.**

Belmont C.P. No. 99-CR-192. On motion for stay of proceedings pending competency evaluation and motion to employ psychologist at state expense. Motions denied.

Pfeifer, J., dissents.

**2005-0049. State v. Grimsley.**

Butler App. No. CA2004-10-265. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and O'Donnell, JJ., dissent.

**2005-0076. State v. Smith.**

Clark App. No. 2003 CA 93, 2004-Ohio-6062. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**2005-0134. D&R Properties v. Burton Twp.**

Geauga App. No. 2003-G-2523, 2004-Ohio-6939. On motion for stay of court of appeals' judgment. Motion denied.

Resnick and Lundberg Stratton, JJ., dissent.

**2005-0219. Reveria Tavern, Inc. v. Summit Cty. Bd. of Elections.**

Summit App. No. 21893, 2004-Ohio-6733. On motion for stay of court of appeals' judgment. Motion denied.

Resnick, J., dissents.

**2005-0269. State ex rel. Smith v. Pike.**

In Prohibition. On emergency motion for issuance of an alternative writ. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2004-1917. In re McBride.**

Hamilton App. No. C-040456, 158 Ohio App.3d 572, 2004-Ohio-5269.

Resnick, Pfeifer and O'Connor, JJ., dissent.

**2004-1924. Steelton Village Market, Inc. v. Liquor Control Comm.**

Franklin App. No. 03AP-920, 2004-Ohio-5260.

Pfeifer and O'Connor, JJ., dissent.

**2004-1971. State v. Washatka.**

Cuyahoga App. No. 83679, 2004-Ohio-5384. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

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

**2004-2002. State v. Mason.**

Cuyahoga App. No. 84061, 2004-Ohio-5388. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No.

83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2004-2003. State v. Moore.**

Cuyahoga App. No. 83653, 2004-Ohio-5383. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2004-1480. State v. Razo.**

Lorain App. No. 03CA008263, 2004-Ohio-3405. Discretionary appeal not accepted. Motion to strike denied as moot.

**2004-1782. State v. Dowell.**

Cuyahoga App. No. 83575, 2004-Ohio-3870.

**2004-1898. State v. Beach.**

Lucas App. No. L-02-1087, 2004-Ohio-5232.  
Lanzinger, J., not participating.

**2004-1906. Akron v. Butler.**

Summit App. No. 21870, 2004-Ohio-5164.  
Lundberg Stratton, J., dissents.

**2004-1907. Liese v. Kent State Univ.**

Portage App. No. 2003-P-0033, 2004-Ohio-5322.

**2004-1909. State v. Sims.**

Allen App. No. 1-04-29, 2004-Ohio-5093.

**2004-1910. State v. Sims.**

Allen App. No. 1-04-30, 2004-Ohio-5094.

**2004-1914. State v. Jackson.**

Union App. No. 14-04-11, 2004-Ohio-5103.

**2004-1919. State v. Davis.**

Vinton App. No. 03CA587, 158 Ohio App.3d 478, 2004-Ohio-5354.

Lundberg Stratton, J., dissents.

**2004-1922. State v. Friley.**

Franklin App. No. 03AP-1032.

**2004-1928. Jesse v. May Dept. Stores Co.**

Lake App. No. 2003-L-064, 2004-Ohio-5313. Discretionary appeal not accepted.

Lundberg Stratton, O'Connor and O'Donnell, JJ., dissent.

Discretionary cross-appeal not accepted.

Lundberg Stratton, J., dissents.

**2004-1929. Auto-Owners Ins. Co. v. J.C.K.C., Inc.**

Summit App. No. 21847, 2004-Ohio-5186.

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

**2004-1930. Chagrin Falls v. Geauga Cty. Bd. of Commrs.**

Geauga App. No. 2003-G-2530, 2004-Ohio-5310.

O'Donnell, J., dissents.

**2004-1943. Borkowski v. Shaffer.**

Fulton App. No. F-04-029. Discretionary appeal not accepted. Motion to consolidate denied as moot.

**2004-1947. State v. Shue.**

Cuyahoga App. No. 84007, 2004-Ohio-5021.

**2004-1948. State v. Tarver.**

Stark App. No. 2004CA00022, 2004-Ohio-5508.

**2004-1949. Futey v. Ohio Dept. of Job & Family Serv.**

Richland App. No. 04 CA 14, 2004-Ohio-5400.

Resnick, Pfeifer and O'Donnell, JJ., dissent.

**2004-1950. State v. Nieland.**

Greene App. No. 2004-CA-99.

**2004-1952. Rickels v. Goyings.**

Paulding App. No. 11-04-13.

**2004-1956. Croston v. DeVaux.**

Stark App. Nos. 2003CA00394 and 2003CA00420, 2004-Ohio-5472.  
Moyer, C.J., dissents.

**2004-1959. Natl. City Bank v. Abundant Life Apostolic.**

Lorain App. No. 04CA008447, 2004-Ohio-5372 and 2004-Ohio-5716.

**2004-1960. Cupp v. Kudla.**

Mahoning App. No. 2003 MA 0051, 2004-Ohio-5528.

**2004-1962. State v. Moreland.**

Montgomery App. No. 20331, 2004-Ohio-5778.

**2004-1963. State v. Russell.**

Cuyahoga App. No. 83699, 2004-Ohio-5031.

**2004-1964. James v. Delphi Automotive Sys.**

Franklin App. No. 04AP-215, 2004-Ohio-5493.

**2004-1965. Jenisek v. Highland Group, Inc.**

Cuyahoga App. No. 83569, 2004-Ohio-4910.

Lundberg Stratton, J., dissents.

**2004-1969. State v. Hubbard.**

Cuyahoga App. No. 83384, 2004-Ohio-4627.

Lanzinger, J., dissents and would accept on Proposition of Law III.

**2004-1975. State v. Speed.**

Cuyahoga App. No. 83746, 2004-Ohio-5211.

**2004-1977. State v. Hines.**

Cuyahoga App. No. 83485, 2004-Ohio-5206.

**2004-1978. State v. White.**

Cuyahoga App. No. 82066, 2004-Ohio-5200.

Pfeifer, J., dissents.

**2004-1980. In re S.C.**

Miami App. No. 2004-CA-14, 2004-Ohio-5800.

**2004-1985. Davis v. Buckeye State Mut. Ins. Co.**

Miami App. No. 2002-CA-48, 2004-Ohio-5795.

**2004-1986. Maynor v. Ewings.**

Cuyahoga App. No. 83248, 2004-Ohio-5033.

**2004-1988. State v. Lee.**

Franklin App. No. 03AP-436, 2004-Ohio-5540.

**2004-1990. Coleman v. Kaiser Permanente of Ohio.**

Cuyahoga App. No. 84130, 2004-Ohio-5478.

**2004-1991. State v. Leon.**

Cuyahoga App. No. 85139.

Lanzinger, J., dissents.

**2004-1992. State v. Hackett.**

Cuyahoga App. No. 83810, 2004-Ohio-5386.

**2004-1994. State v. Hoover-Moore.**

Franklin App. No. 03AP-1186, 2004-Ohio-5541.

Moyer, C.J., dissents and would accept on Proposition of Law I.

Pfeifer, J., dissents.

**2004-1995. Giampaolo v. Schmitt.**

Cuyahoga App. No. 84240.

**2004-1996. Hill v. Yeager.**

Wood App. No. WD-04-010, 2004-Ohio-5663.

Resnick, J., dissents.

O'Donnell, J., dissents and would accept on Proposition of Law II.

Lanzinger, J., not participating.

**2004-2000. Paar v. Jackson Twp. Bd. of Trustees.**

Stark App. No. 2003-CA-00334, 2004-Ohio-5567.

**2004-2005. Lopez v. Dave's Supermarket, Inc.**

Cuyahoga App. No. 83789, 2004-Ohio-5385.

**2004-2006. Gooden v. Natl. Union Fire Ins. Co.**

Stark App. No. 2004CA00011, 2004-Ohio-5569. Discretionary appeal and cross-appeal not accepted.

Moyer, C.J., dissents and would accept the appeal on Propositions of Law I and III.

**2004-2007. State v. Williams.**

Delaware App. No. 03 CA-A-12-074, 2004-Ohio-6202.

**2004-2010. Harden v. Univ. of Cincinnati Med. Ctr.**

Franklin App. No. 04AP-154, 2004-Ohio-5548.

**2004-2012. Stohlmann v. Hall.**

Cuyahoga App. No. 83846, 158 Ohio App.3d 499, 2004-Ohio-5219.

**2004-2013. State v. Call.**

Marion App. No. 9-04-29, 2004-Ohio-5645.

**2004-2022. State v. Knott.**

Athens App. No. 03CA30, 2004-Ohio-5745.

**2004-2028. Struna v. Ohio Lottery Comm.**

Franklin App. No. 03AP-787, 2004-Ohio-5576.

O'Donnell, J., dissents and would accept on Proposition of Law I.

**2004-2030. Henson v. Casey.**

Pickaway App. No. 04CA9, 2004-Ohio-5848.

**2004-2032. State v. Holtman.**

Hamilton App. No. C-030511.

**2004-2035. State v. Ford.**

Cuyahoga App. No. 84138, 2004-Ohio-5610.

**2004-2041. State v. Shelton.**

Cuyahoga App. No. 83289, 2004-Ohio-5484.

**2004-2084. State v. Brown.**

Cuyahoga App. No. 84322, 2004-Ohio-6421.

**2004-2096. State v. Rexroad.**

Summit App. No. 22214, 2004-Ohio-6271.

## RECONSIDERATION OF PRIOR DECISIONS

### **2002-1350. State v. Foust.**

Cuyahoga C.P. No. CR-406021. Reported at \_\_\_ Ohio St.3d \_\_\_, 2004-Ohio-7006, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lanzinger, J., not participating.

### **2002-1377. State v. Cunningham.**

Allen C.P. No. CR2002-0010. Reported at \_\_\_ Ohio St.3d \_\_\_, 2004-Ohio-7007, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lanzinger, J., not participating.

### **2004-0225 and 2004-0276. State v. Fraley.**

Erie App. Nos. E-02-050 and E-02-051, 2003-Ohio-6976. Reported at 105 Ohio St.3d 13, 2004-Ohio-7110, 821 N.E.2d 995. On motion for reconsideration. The motion fails for want of four votes on the following vote:

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., vote to grant.

Resnick, O'Connor and O'Donnell, JJ., vote to deny.

Lanzinger, J., not participating.

### **2004-1549. State v. Raymer.**

Hamilton App. No. C-040498. Reported at 104 Ohio St.3d 1439, 2004-Ohio-7033, 819 N.E.2d 1123. On motion for reconsideration. Motion denied.

### **2004-1593. Wright v. Campbell Soup Co.**

Henry App. No. 7-04-02, 2004-Ohio-4164. Reported at 104 Ohio St.3d 1440, 2004-Ohio-7033, 819 N.E.2d 1123. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

### **2004-1607. State v. Ambrose.**

Cuyahoga App. No. 83859, 2004-Ohio-4237. Reported at 104 Ohio St.3d 1440, 2004-Ohio-7033, 819 N.E.2d 1123. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents and would remand for the application of *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864.