

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

February 28, 2007

[Cite as *02/28/2007 Case Announcements, 2007-Ohio-724.*]

MERIT DECISIONS WITH OPINIONS

2005-1843. State v. Lowe, 2007-Ohio-606.

Stark App. No. 2004CA00292, 2005-Ohio-4274. Judgment affirmed.

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

Pfeifer, J., dissents.

James J. Sweeney, J., of the Eighth Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

2005-2137 and 2005-2384. Gehm v. Timberline Post & Frame, 2007-Ohio-607.

Summit App. No. 22479, 2005-Ohio-5222. Judgment affirmed.

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

O'Donnell, J., dissents.

William H. Harsha, J., of the Fourth Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

2006-0051. Am. Interstate Ins. Co. v. G & H Serv. Ctr., 2007-Ohio-608.

Shelby App. No. 17-05-08, 165 Ohio App.3d 104, 2005-Ohio-5753. Judgment affirmed.

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

Diane V. Grendell, J., of the Eleventh Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

2006-0789. State ex rel. Lanham v. Smith, 2007-Ohio-609.

In Mandamus. Writ denied.

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

2006-1623. In re Application of Bell, 2007-Ohio-610.

On Report by the Board of Commissioners on Character and Fitness, No. 278. The application of Rebecca J. Bell to take the Ohio bar examination is disapproved.

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

Cupp, J., not participating.

2006-1641. Toledo Bar Assn. v. Shousher, 2007-Ohio-611.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 05-050. Mohamed Y. Shousher, Attorney Registration No. 0016006, is suspended from the practice of law in Ohio for two years, with 18 months stayed on conditions.

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

Lanzinger and Cupp, JJ., not participating.

2006-1955. Columbus Bar Assn. v. Gardner, 2007-Ohio-612.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 05-023. William Allen Gardner, Attorney Registration No. 0000614, is suspended from the practice of law in Ohio for one year, stayed on condition.

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

Cupp, J., not participating.

MERIT DECISIONS WITHOUT OPINIONS

2006-2269. State ex rel. Prestwood v. Wolaver.

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

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

2006-2290. State ex rel. Watterson v. Disciplinary Counsel.

In Mandamus. On respondent's motion to dismiss and relator's motion for leave to file amended writ of mandamus. Motion to dismiss granted. Motion for leave to file amended writ of mandamus denied. Cause dismissed.

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

2006-2394. Facundo v. Bur. of Prisons.

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

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

2006-2400. Nedea v. Jackson.

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

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

2007-0004. Banks v. Jeffreys.

In Habeas Corpus. On petition for writ of habeas corpus of Shawn L. Banks. Sua sponte, cause dismissed.

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

2007-0038. Avery v. Beightler.

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

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

2007-0044. Hill v. Wolfe.

In Habeas Corpus. On petition for writ of habeas corpus of Robert L. Hill. Sua sponte, cause dismissed.

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

2007-0066. Jackson v. Ohio Adult Parole Auth.

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

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

MOTION AND PROCEDURAL RULINGS

2004-1554. State v. Craig.

Summit C.P. No. 2003-06-1638. On application for reopening under S.Ct.Prac.R. XI(6). Application denied.

2005-2230. State v. Swanson.

Ashland App. No. 05 CA 13, 2006-Ohio-5471. On suggestion of death of appellant and motion to maintain the appeal. Motion granted.

O'Connor, O'Donnell and Lanzinger, JJ., dissent.

2006-0974. State ex rel. Baja Marine Corp. v. Indus. Comm.

Franklin App. No. 05AP-555, 2006-Ohio-1646. On request for oral argument. Request denied.

2006-1074. In re Spears.

Licking App. No. 2005-CA-93, 2006-Ohio-1920. On motion for admission pro hac vice of Marsha L. Levick by Jill E. Beeler and motion for admission pro hac vice of Lourdes M. Rosado, Jennifer K. Pokempner, Mia V. Carpiniello, and Riya S. Shah by Jill E. Beeler. Motions granted.

2006-1944. A. Schulman, Inc. v. Levin.

Board of Tax Appeals, No. 2004-B-370. On motion to lift stay of briefing schedule. Motion denied.

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

2006-2139. State v. Colon.

Cuyahoga App. No. 87499, 2006-Ohio-5335. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 1 of the court of appeals' Journal Entry filed November 2, 2006:

“Where an indictment fails to charge the mens rea element of the crime, and the defendant fails to raise that issue in the trial court, has the defendant waived the defect in the indictment?”

O'Connor and Lanzinger, JJ., dissent.

Cupp, J., not participating.

The conflict cases are *State v. Shugars*, 165 Ohio App.3d 379, 2006-Ohio-718, and *State v. Daniels*, Putnam App. No. 12-03-12, 2004-Ohio-2063.

Sua sponte, cause consolidated with 2006-2250, *State v. Colon*, Cuyahoga App. No. 87499, 2006-Ohio-5335.

2006-2187. Hyle v. Porter.

Hamilton App. No. C-050768, 2006-Ohio-5454. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the following issue:

“Whether R.C. 2950.031—Ohio’s residency-restriction statute prohibiting certain sexually oriented offenders from living within 1,000 feet of a school—can be applied to an offender who had bought his home and committed his offense before July 31, 2003 (the effective date of the statute).”

The conflict case is *Nasal v. Dover*, Miami App. No. 2006-CA-9, 2006-Ohio-5584.

2006-2311. Nasal v. Dover.

Miami App. No. 2006-CA-9, 2006-Ohio-5584. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2006-2187, *Hyle v. Porter*, Hamilton App. No. C-050768, 2006-Ohio-5454; cause consolidated with 2006-2220, *Nasal v. Dover*, Miami App. No. 2006-CA-9, 2006-Ohio-5584; and briefing schedule stayed.

2006-2360. State v. Myers.

Wayne App. No. 06CA0003, 2006-Ohio-5958. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552; cause consolidated with 2006-2362, *State v. Myers*, Wayne App. No. 06CA0003, 2006-Ohio-5958; and briefing schedule stayed.

2006-2372. State v. Jones.

Defiance App. No. 4-05-21, 2006-Ohio-5147. On motion for leave to file delayed appeal. Motion granted.

O’Donnell, J., dissents.

Cupp, J., not participating.

2006-2393. Advent v. Allstate Ins. Co.

Franklin App. No. 06AP-103, 2006-Ohio-5522 and 2006-Ohio-6791. On review of order certifying a conflict. The court determines that a conflict exists. The

parties are to brief the issue stated in the court of appeals' Journal Entry filed December 21, 2006:

“Can the S.B. No. 97 amendments to R.C. 3937.18 be incorporated into an insurance policy during a two-year guarantee period that commenced subsequent to the S.B. No. 267 amendments to R.C. 3937.18 and R.C. 3937.31, but prior to the S.B. No. 97 amendments?”

Lundberg Stratton and Cupp, JJ., would also hold the cause for the decision in 2005-2277, *Shay v. Shay*, Fulton App. No. F-05-008, 2005-Ohio-5874.

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

The conflict case is *Storer v. Sharp*, Cuyahoga App. No. 86525, 2006-Ohio-1577.

Sua sponte, cause consolidated with 2006-2271, *Advent v. Allstate Ins. Co.*, Franklin App. No. 06AP-103, 2006-Ohio-5522 and 2006-Ohio-6791.

2006-2398. State v. Buske.

Stark App. No. 2005CA00240, 2006-Ohio-2054. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

2007-0005. State v. Barger.

Champaign App. No. 2006-CA-12, 2006-Ohio-5559. On motion for leave to file delayed appeal. Motion granted.

2007-0010. State v. Collins.

Summit App. No. 23005, 2006-Ohio-4722. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2007-0030. State v. Cunningham.

Franklin App. No. 06AP-145, 2006-Ohio-6373. On amended motion for stay of court of appeals' judgment. Motion denied.

2007-0041. Todd Dev. Co., Inc. v. Morgan.

Warren App. No. CA2005-11-124, 2006-Ohio-4825. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 8 of the court of appeals' Decision and Entry filed December 13, 2006:

“Does a plaintiff or counterclaimant moving for summary judgment granting affirmative relief on its own claims bear the initial burden of addressing the non-moving party's affirmative defenses in its motion?”

O'Donnell, J., dissents.

The conflict case is *Countrymark Cooperative, Inc. v. Smith* (1997), 124 Ohio App.3d 159, 705 N.E.2d 738.

2007-0047. State v. Bly.

Licking App. No. 06CA86. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2007-0050. State ex rel. E. Ohio Gas Co. v. Russo.

In Mandamus. On relator's motion for stay of Lake County Common Pleas Court No. 06CV002747 pending final adjudication of relator's writ of mandamus and relator's motion to strike memorandum of Judge Russo opposing motion for stay. Motions denied.

O'Donnell, J., would grant the motion to strike.

O'Connor, J., not participating.

2007-0051. State v. Bennett.

Cuyahoga App. No. 86962, 2006-Ohio-4274. On motion for leave to file delayed appeal. Motion granted.

Pfeifer and Lanzinger, JJ., dissent.

2007-0067. State v. Caporini.

Jefferson App. No. 05 JE 32, 2006-Ohio-3095. On motion for leave to file delayed appeal. Motion denied.

2007-0085. In re Estate of Nipper.

Summit App. No. 23125, 2006-Ohio-6753. On expedited motion for emergency relief to stay the trial of the Summit County Probate Court scheduled for January 23, 2007. Motion denied.

2007-0100. State v. Butcher.

Ashtabula App. No. 2005-A-0033, 2007-Ohio-118. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer and Lanzinger, JJ., dissent.

2007-0140. Barnes v. Univ. Hosp. of Cleveland.

Cuyahoga App. Nos. 87247, 87285, 87710, 87903 and 87946, 2006-Ohio-6266. On motions for stay of court of appeals' judgment by Medlink of Ohio and The Medlink Group, Inc. and by Lexington Insurance Company. Motions denied.

Moyer, C.J., and Lundberg Stratton, J., dissent.
O'Connor, J., not participating.

APPEALS ACCEPTED FOR REVIEW

2006-1913. Borkowski v. Abood.

Lucas App. No. L-05-1425, 2006-Ohio-4913. Discretionary appeal accepted.
O'Connor, J., dissents.
Appellee's motions to dismiss appeal and to strike appeal are denied.

2006-2072. Pruszynski v. Reeves.

Geauga App. No. 2005-G-2612, 2006-Ohio-5190. Discretionary appeal of appellant Van Driest is accepted.
Pfeifer and O'Connor, JJ., dissent.
Discretionary appeal of appellant Kaufman is accepted on Proposition of Law Nos. I and III.
Lundberg Stratton and Lanzinger, JJ., would also accept the appeal on Proposition of Law No. II.
Pfeifer, J., dissents.

2006-2095. McKinley v. Ohio Bur. of Workers' Comp.

Washington App. No. 06CA7, 2006-Ohio-5271. Discretionary appeal accepted; cause held for the decision in 2006-1914, *Groch v. Gen. Motors Corp.*, Certified Questions of State Law, United States District Court, Northern District of Ohio, Western Division, Case No. 3:06-CV-1604; and briefing schedule stayed.
Pfeifer, J., would accept the appeal without holding.

2006-2096. Jackson v. Columbus.

Franklin App. No. 05AP-1035, 2006-Ohio-5209. Discretionary appeal accepted on Proposition of Law No. I.
Pfeifer and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. II.
Lundberg Stratton, O'Connor and Cupp, JJ., dissent.
Motion to strike notice of appeal and case information statement denied.

2006-2101. State v. Jordan.

Franklin App. No. 05AP-1330, 2006-Ohio-5208. Discretionary appeal accepted on Proposition of Law No. III; cause held for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552; and briefing schedule stayed.

Pfeifer, J., dissents.

2006-2135. State v. Wamsley.

Columbiana App. No. 05 CO 11, 2006-Ohio-5303.

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

2006-2220. Nasal v. Dover.

Miami App. No. 2006-CA-9, 2006-Ohio-5584. Discretionary appeal accepted; cause held for the decision in 2006-2187, *Hyle v. Porter*, Hamilton App. No. C-050768, 2006-Ohio-5454; cause consolidated with 2006-2311, *Nasal v. Dover*, Miami App. No. 2006-CA-9, 2006-Ohio-5584; and briefing schedule stayed.

Pfeifer, J., dissents.

2006-2250. State v. Colon.

Cuyahoga App. No. 87499, 2006-Ohio-5335. Discretionary appeal accepted on Proposition of Law No. VI and cause consolidated with 2006-2139, *State v. Colon*, Cuyahoga App. No. 87499, 2006-Ohio-5335.

Lundberg Stratton, J., would also accept the appeal on Proposition of Law No. VII.

Pfeifer and O'Connor, JJ., dissent.

Cupp, J., not participating.

2006-2271. Advent v. Allstate Ins. Co.

Franklin App. No. 06AP-103, 2006-Ohio-5522 and 2006-Ohio-6791. Discretionary appeal accepted and cause consolidated with 2006-2393, *Advent v. Allstate Ins. Co.*, Franklin App. No. 06AP-103, 2006-Ohio-5522 and 2006-Ohio-6791.

Lundberg Stratton and Cupp, JJ., would also hold the cause for the decision in 2005-2277, *Shay v. Shay*, Fulton App. No. F-05-008, 2005-Ohio-5874.

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

2006-2289. State v. Fugate.

Franklin App. No. 06AP-298, 2006-Ohio-5748. Discretionary appeal accepted on Proposition of Law No. I.

O'Donnell, J., would also accept the appeal on Proposition of Law No. II.

Pfeifer and Cupp, JJ., dissent.

2006-2294. State v. Forbes.

Cuyahoga App. No. 87473, 2006-Ohio-5612. Discretionary appeal accepted; cause held for the decision in 2005-2186, *State v. Wilson*, Cuyahoga App. No. 85015, 2005-Ohio-4994; and briefing schedule stayed.

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

2006-2362. State v. Myers.

Wayne App. No. 06CA0003, 2006-Ohio-5958. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-5225; cause consolidated with 2006-2360, *State v. Myers*, Wayne App. No. 06CA0003, 2006-Ohio-5958; and briefing schedule stayed.

Pfeifer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2006-1911. State v. Abner.

Montgomery App. No. 20661, 2006-Ohio-4510. Discretionary appeal and cross-appeal not accepted.

O'Donnell, J., dissents and would accept the appeal.

2006-1960. State v. Burke.

Franklin App. No. 06AP-656, 2006-Ohio-4597. Discretionary appeal not accepted. Motion to consolidate this cause with 2006-2259, *State v. Burke*, Franklin App. No. 06AP-656, 2006-Ohio-4597, denied as moot.

2006-2033. State v. Hairston.

Lorain App. No. 05CA008768, 2006-Ohio-4925.

2006-2053. Pierce v. Pierce.

Columbiana App. No. 05 CO 49, 2006-Ohio-4953.

2006-2059. State v. Camp.

Delaware App. No. 05 CAA 12 0086, 2006-Ohio-4950.

2006-2064. State v. Boggs.

Lucas App. No. L-05-1304, 2006-Ohio-4912.

2006-2069. Banfield v. Brodell.

Mahoning App. No. 06 MA 8, 2006-Ohio-5267.

O'Connor, J., dissents.

2006-2073. Bikkani v. Lee.

Cuyahoga App. No. 88650. Discretionary appeal not accepted. On motion to remove Matthew T. Fitzsimmons as a personally-named defendant-appellee and motion of Northeast Ohio Neighborhood Health Services, Inc., et al., to strike memo opposing the motion to remove Matthew Fitzsimmons as a personally-named defendant-appellee. Motions granted.

Pfeifer and O'Donnell, JJ., dissent.

On motion to classify appellant as a vexatious litigator and motion for sanctions for frivolous action. Motions granted.

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

2006-2075. Green v. Westfield Ins. Co.

Medina App. No. 06CA0025-M, 2006-Ohio-5057.

Pfeifer and O'Donnell, JJ., dissent.

2006-2077. State v. Lynch.

Hamilton App. No. C-050914, 2006-Ohio-5076.

Pfeifer, J., dissents.

2006-2083. State v. Cardinal.

Franklin App. Nos. 05AP-992, 05AP-993 and 05AP-994, 2006-Ohio-5088.

O'Donnell, J., dissents.

2006-2086. State v. Brown.

Cuyahoga App. No. 86577, 2006-Ohio-4584.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I through IV and hold the cause for the decision in 2006-2187, *Hyle v. Porter*, Hamilton App. No. C-050768, 2006-Ohio-5454.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decision in 2006-2187, *Hyle v. Porter*, Hamilton App. No. C-050768, 2005-Ohio-5454.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law Nos. I through IV.

2006-2088. State v. McGhee.

Shelby App. No. 17-06-05, 2006-Ohio-5162.

Cupp, J., not participating.

2006-2091. State v. Krueger.

Hamilton App. No. C-050170.

2006-2093. Ash v. Grange Mut. Cas. Co.

Morrow App. Nos. 2005CA0014 and 2005CA0015, 2006-Ohio-5221.
Pfeifer and Lanzinger, JJ., dissent.

2006-2097. Rinebold v. J.P. Ent.

Wood App. No. WD-05-096, 2006-Ohio-5119.
Pfeifer, J., dissents.

2006-2099. Cowett v. TCH Pediatrics, Inc.

Mahoning App. No. 05 MA 138, 2006-Ohio-5269.
Moyer, C.J., and Pfeifer, J., dissent.

2006-2100. State v. Willard.

Medina App. No. 05CA0096-M, 2006-Ohio-5071.

2006-2103. State v. Duchon.

Franklin App. No. 06AP-574.
Moyer, C.J., dissents.

2006-2104. State v. Mitchell.

Williams App. No. WM-05-004, 2006-Ohio-5117.

O'Donnell, J., dissents and would accept the appeal and hold the cause for the decision in 2006-2083, *State v. Cardinal*, Franklin App. Nos. 05AP-992, 05AP-993, and 05AP-994, 2006-Ohio-5088.

2006-2105. Fraternal Order of Eagles, Aerie 2171 Meigs, Inc. v. Ohio Dept. of Pub. Safety.

Meigs App. No. 05CA18, 2006-Ohio-5237.

2006-2106. State v. Scott.

Franklin App. No. 05AP-1144, 2006-Ohio-4981.

2006-2107. State v. West.

Franklin App. No. 06AP-114, 2006-Ohio-5095.

2006-2113. State v. Hoppers.

Lorain App. No. 06CA009005.

2006-2117. In re Estate of Ivanchak.

Trumbull App. No. 2005-T-0094, 2006-Ohio-5175.

Pfeifer and Lundberg Stratton, JJ., dissent.

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-2122. Sabat v. Garfield Mall Assoc.

Cuyahoga App. No. 87227, 2006-Ohio-4764.

2006-2123. Keytack v. Warren.

Trumbull App. No. 2005-T-0152, 2006-Ohio-5179.

2006-2127. K&B Capital, LLC v. I-X Ctr./Park Corp., Inc.

Cuyahoga App. No. 86871, 2006-Ohio-4881. Discretionary appeal not accepted. Motion for admission pro hac vice of David J. Shea by Elizabeth Geary granted.

2006-2131. O'Brien v. Ravenswood Apts., Ltd.

Hamilton App. No. C-050713, 2006-Ohio-5264.

2006-2134. State v. Gooden.

Marion App. No. 9-06-17, 2006-Ohio-5387.

Cupp, J., not participating.

2006-2137. State v. Kuhn.

Defiance App. No. 4-06-16, 2006-Ohio-5390.

Cupp, J., not participating.

2006-2142. State v. Crenshaw.

Hamilton App. No. C-060777.

2006-2143. State v. Chaney.

Seneca App. No. 13-04-55, 2006-Ohio-5288.

O'Connor, J., dissents.

Cupp, J., not participating.

2006-2149. Mid-Ohio Mechanical, Inc. v. Carden Metal Fabricators, Inc.

Guernsey App. No. 2006-CA-13, 2006-Ohio-5293.

2006-2150. Wright v. Ohio Dept. of Commerce.

Hamilton App. No. C-050932.

2006-2151. State v. Boylen.

Stark App. Nos. 2006 CA 00125 and 2006 CA 00126, 2006-Ohio-5685.

2006-2160. State v. Cunigan.

Montgomery App. No. 21356, 2006-Ohio-5756. Discretionary appeal not accepted. Motion to vacate or set aside sentence denied.

2006-2163. Essex Ins. Co. v. Mirage on the Water, Inc.

Cuyahoga App. No. 87507, 2006-Ohio-5023.

2006-2164. Doe v. Catholic Diocese of Cleveland.

Cuyahoga App. Nos. 86419 and 86459, 2006-Ohio-5233.

Pfeifer, J., dissents.

Lanzinger, J., not participating.

2006-2165. State v. Mickens.

Franklin App. Nos. 06AP-822, 06AP-823, and 06AP-825.

2006-2166. State v. Morgan.

Franklin App. No. 05AP-552, 2006-Ohio-5297.

2006-2167. Temple v. Fence One, Inc.

Cuyahoga App. No. 88648.

2006-2168. State v. Azir.

Cuyahoga App. No. 87479, 2006-Ohio-5449.

2006-2174. State v. Chojnacki.

Medina App. No. 05CA0100-M, 2006-Ohio-5287.

2006-2178. State v. Bevins.

Hamilton App. No. C-050481, 2006-Ohio-5455.

2006-2180. State v. Henderson.

Cuyahoga App. No. 87312, 2006-Ohio-5242.

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

2006-2181. Wiencek v. Higgins.

Guernsey App. No. 05CA38, 2006-Ohio-5680.

2006-2186. State v. Coston.
Hamilton App. No. C-050091.

2006-2193. State v. Hughes.
Franklin App. No. 05AP-1287, 2006-Ohio-5411.

2006-2200. State v. Vanmoore.
Franklin App. No. 06AP-892.

2006-2204. State v. Haney.
Clark App. No. 2005-CA-100, 2006-Ohio-5578.

2006-2208. McNeely v. Ross Correctional Inst.
Franklin App. No. 06AP-280, 2006-Ohio-5414.

2006-2210. Sheridan v. Ohio Bur. of Workers' Comp.
Franklin App. No. 06AP-974.

2006-2212. State v. Cleaver.
Montgomery App. No. 21387, 2006-Ohio-5962.

2006-2215. State v. Mapson.
Cuyahoga App. No. 87409, 2006-Ohio-5248.

2006-2219. State v. Quinones.
Cuyahoga App. No. 88761.

2006-2223. State v. McClure.
Hamilton App. No. C-050934.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-2225. State v. Clark.
Mahoning App. No. 04 MA 246, 2006-Ohio-1155.

2006-2233. State v. Yaacov.
Cuyahoga App. No. 86674, 2006-Ohio-5321.

2006-2234. Bambeck v. Catholic Diocese of Cleveland.

Cuyahoga App. No. 86894, 2006-Ohio-4883.
O'Connor and O'Donnell, JJ., not participating.

2006-2237. State v. Blazo.

Summit App. No. 23054, 2006-Ohio-5418.

2006-2241. State v. Starcher.

Medina App. No. 06CA0021-M, 2006-Ohio-5955.

2006-2245. State v. Edwards.

Hamilton App. No. C-050883, 2006-Ohio-5596.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. III.

2006-2246. In re Estate of Visnich.

Trumbull App. No. 2005-T-0128, 2006-Ohio-5499.

O'Connor, J., not participating.

2006-2247. State v. Smith.

Lorain App. No. 06CA008926, 2006-Ohio-5478.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. I.

2006-2259. State v. Burke.

Franklin App. No. 06AP-656, 2006-Ohio-4597. Discretionary appeal not accepted. Motion to consolidate this cause with 2006-1960, *State v. Burke*, Franklin App. No. 06AP-656, 2006-Ohio-4597, denied as moot.

2006-2268. State v. Lynch.

Lorain App. No. 06CA008938, 2006-Ohio-5813.

2006-2280. State v. Heard.

Summit App. No. 23025, 2006-Ohio-3558.

2006-2304. State v. Jenkins.

Lawrence App. No. 05CA7, 2006-Ohio-2546.

O'Connor, J., dissents and would reverse the judgment of the court of appeals and remand the cause for application of *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110.

2006-2351. State v. Powers.

Cuyahoga App. No. 86381, 2006-Ohio-1942 and 2006-Ohio-6018.

2007-0009. In re J.J.

Franklin App. No. 06AP-495, 2006-Ohio-6151.

RECONSIDERATION OF PRIOR DECISIONS

2005-1788. State v. Azbell.

Richland App. No. 2005-CA-0004, 2005-Ohio-4405. Reported at 112 Ohio St.3d 300, 2006-Ohio-6552, 859 N.E.2d 532. On motion for reconsideration. Motion fails for want of four votes.

Moyer, C.J., Pfeifer and Lanzinger, JJ., would grant the motion.

Lundberg Stratton, O'Connor and O'Donnell, JJ., would deny the motion.

Cupp, J., not participating.

2006-0168. State ex rel. Carr v. Akron.

In Mandamus. Reported at 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948. On motion for reconsideration. Motion denied.

Cupp, J., not participating.

2006-1331. State v. Holloway.

Cuyahoga App. Nos. 86426 and 86427, 2006-Ohio-2591, 2006-Ohio-2591. Reported at 111 Ohio St.3d 496, 2006-Ohio-6114, 857 N.E.2d 141. On motion for reconsideration. The motion is granted to the following extent: The cause is remanded to the court of appeals for consideration of appellee's remaining assignments of error.

Pfeifer and O'Donnell, JJ., dissent.

Cupp, J., not participating.

2006-1549. State ex rel. Brown v. Rhodes.

Hancock App. No. 5-05-25, 2006-Ohio-3394. Reported at 112 Ohio St.3d 153, 2006-Ohio-6523, 858 N.E.2d 412. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

Cupp, J., not participating.

2006-1646. Adoption Link, Inc. v. Suver.

Greene App. No. 06-CA-81, 2006-Ohio-4438. Reported at 112 Ohio St.3d 166, 2006-Ohio-6528, 858 N.E.2d 424. On motion for reconsideration. Motion denied.

Cupp, J., not participating.

2006-1725. State v. Wellman.

Franklin App. No. 05AP-386, 2006-Ohio-3808. Reported at 112 Ohio St.3d 1420, 2006-Ohio-6712, 859 N.E.2d 558. On motion for reconsideration. Motion fails for want of four votes.

Moyer, C.J., and O'Connor, J., would grant the motion, accept the appeal, and hold the cause for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552.

Lanzinger, J., would grant the motion, accept the appeal on Proposition of Law No. III, and hold the cause for the decision in 2006-1245 and 2006-1383, *State v. Payne*, Franklin App. No. 05AP-517, 2006-Ohio-2552.

Pfeifer, J., Lundberg Stratton and O'Donnell, JJ., would deny the motion.

Cupp, J., not participating.

2006-1944. A. Schulman, Inc. v. Levin.

Board of Tax Appeals, No. 2004-B-370. Reported at 112 Ohio St.3d 1208, 2006-Ohio-6677, 859 N.E.2d 553. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

Cupp, J., not participating.

2006-1971. State ex rel. Griffin v. State.

In Mandamus. Reported at 112 Ohio St.3d 1415, 2006-Ohio-6712, 859 N.E.2d 555. On relator's motions to adopt memorandum in support of jurisdiction filed in 2006-1552, *State v. Griffin*, Summit App. No. 23306, as relator's merit brief, for damages, for reconsideration, for leave to amend complaint, for relief from judgment, for summary judgment, for summary judgment and sanctions, to amend Civ.R. 19, for protective order, for official document request, for oral argument, for jury trial, for immunity determination, to compel and demand, for procedural default, and for leave to amend and appeal. Motions denied.

Cupp, J., not participating.

2006-2061. State v. Love.

Lucas App. No. L-05-1087, 2006-Ohio-2925. Reported at 112 Ohio St.3d 1417, 2006-Ohio-6712, 859 N.E.2d 557. On motion for reconsideration. Motion denied.

Cupp, J., not participating.