

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

March 8, 2006

[Cite as *03/08/2006 Case Announcements, 2006-Ohio-962.*]

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## MERIT DECISIONS WITH OPINIONS

**2003-0647. State v. Conway, 2006-Ohio-791.**

Franklin C.P. No. 02CR-1153. Judgment affirmed.

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

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

**2004-1594. M. Conley Co. v. Anderson, 2006-Ohio-792.**

Stark App. No. 2003CA00386, 2004-Ohio-4216. Judgment affirmed.

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

Lundberg Stratton and O'Donnell, JJ., concur separately.

**2005-1154. Muskingum Cty. Certified Grievance Commt. v. Greenberger, 2006-Ohio-790.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 03-105. Bruce L. Greenberger, Attorney Registration No. 0023820, is suspended from the practice of law in Ohio for two years, with six months stayed on conditions.

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

## MERIT DECISIONS WITHOUT OPINIONS

**2006-0031. State ex rel. Weaver v. Schweikert.**

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

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

**2006-0081. State ex rel. Klein v. Doan.**

In Mandamus and Procedendo. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**1987-0327. State v. Clark.**

Lucas App. No. L-84-443. On motion to set execution date. Motion granted. Execution to be carried out on Tuesday, May 2, 2006.

**2005-1215. In re T.K.**

Cuyahoga App. No. 84934, 2005-Ohio-2321. On motion for review of placement to determine appropriateness of placement and release from custody of Ohio Department of Youth Services. Motion denied.

**2006-0099. State v. Levy.**

Cuyahoga App. No. 83114, 2004-Ohio-4489. On motion for leave to file delayed appeal. Motion denied.

**2006-0111. State v. Lamarr.**

Logan App. No. 8-04-39, 2005-Ohio-6030. On motion for leave to file delayed appeal. Motion granted.

Resnick and Lundberg Stratton, JJ., dissent.

**2006-0125. State v. Seay.**

Hamilton App. No. C-040763, 2005-Ohio-5964. On motion for leave to file delayed appeal. Motion granted.

Resnick and Lundberg Stratton, JJ., dissent.

**2006-0127. State v. Tanner.**

Medina App. No. 04CA0062-M, 2005-Ohio-998. On motion for leave to file delayed appeal and motion to strike memorandum opposing motion for delayed appeal. Motions denied.

**2006-0138. Kingdom Life Ministries, Inc. v. Plessinger.**

Hamilton App. No. C-050216. On motion for stay of court of appeals' judgment. Motion denied.

O'Donnell, J., dissents.

**2006-0143. State v. Davis.**

Cuyahoga App. No. 86987. On motion for leave to file delayed appeal. Motion denied.

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

**2006-0150. State v. Holder.**

Huron App. No. H-00-006, 2002-Ohio-399. On motion for leave to file delayed appeal. Motion denied.

**2006-0161. State v. Hall.**

Clark App. No. 05CA0006, 2005-Ohio-6672. On motion for stay of court of appeals' judgment. Motion denied.

**2006-0169. Natl. City Commercial Capital Corp. v. AAAA At Your Service, Inc.**

Butler App. No. CA2005-08-219. 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' Entry Granting Motion to Certify Conflict filed January 11, 2006:

“Whether a dismissal other than on the merits which prevents re-filing in the trial court is a final, appealable order.”

Resnick and O'Donnell, JJ., dissent.

The conflict cases are *Preferred Capital, Inc. v. Al & Lou Builders Supply, Inc.* (Aug. 23, 2005), Summit App. No. 22654, and *Preferred Capital, Inc. v. Strellec*, Cuyahoga App. Nos. 85706, 85707, 85723, 85731, 85732, 85733, 85743, 85744, 85745, 85776, and 85777, 161 Ohio App.3d 346, 2005-Ohio-2607.

On motion for admission pro hac vice of Angela L. Jackson, Patrick J. Bagley, Ruben Acosta, and Jose-Carlos A. Villanueva by Matthew R. Chasar. Motion granted.

**2006-0191. State v. Thomas.**

Hamilton App. No. C-050245, 2005-Ohio-6823. On motion for stay pending lower court decision. Motion denied.

**2006-0204. Lofino v. Berkemeier.**

Greene App. No. 2005-CA-33, 2005-Ohio-6676. On motion for stay of court of appeals' judgment. Motion denied.

**2006-0211. State v. Scheidel.**

Ashtabula App. No. 2003-A-0087, 2006-Ohio-195. On motion for stay of court of appeals' judgment. Motion granted.

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

**2006-0219. Hutchins v. FedEx Ground Package Sys.**

Summit App. No. 22551, 2005-Ohio-6738. On motion for stay of court of appeals' judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2005-2149. State v. Kavanagh.**

Hamilton App. No. C-040767.

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

**2005-2230. State v. Swanson.**

Ashland App. No. 05 CA 13, 2005-Ohio-5471. Discretionary appeal accepted; cause held for the decision in 2005-2336, *State v. Buehler*, Cuyahoga App. No. 85796, 2005-Ohio-5717; and briefing schedule stayed.

Pfeifer, J., would accept the appeal but not hold the cause.

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

On motion for admission pro hac vice of Colin Starger by Gregory W. Meyers. Motion granted.

**2005-2281. In re Estate of Holycross.**

Champaign App. No. 2005 CA 1, 2005-Ohio-5582.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2005-1724. State v. Bordner.**

Wayne App. No. 04CA0039, 2005-Ohio-1269.

**2005-2117. State v. Nipper.**

Butler App. No. CA2005-03-070.

**2005-2146. Zavacky v. A-Best Prod. Co., Inc.**

Cuyahoga App. No. 85833. Discretionary appeal not accepted.

Resnick, J., dissents.

On motion for admission pro hac vice of Jason T. Shipp by John J. Duffy.  
Motion granted.

**2005-2148. State v. Byrd.**

Defiance App. No. 4-05-17, 2005-Ohio-5613.

**2005-2150. Akron Group Servs., Inc. v. Patron Plastics, Inc.**

Summit App. No. 22507, 2005-Ohio-5101.

**2005-2151. Roetenberger v. Christ Hosp.**

Hamilton App. No. C-040009, 163 Ohio App.3d 555, 2005-Ohio-5205.

Lundberg Stratton, J., dissents.

**2005-2160. State v. Byrd.**

Defiance App. No. 4-05-19, 2005-Ohio-5612.

**2005-2161. State v. Byrd.**

Defiance App. No. 4-05-18, 2005-Ohio-5613.

**2005-2163. Rice v. Cuyahoga Cty. Dept. of Justice.**

Cuyahoga App. No. 85576, 2005-Ohio-5337.

Resnick, J., dissents.

**2005-2166. State v. Wills.**

Hamilton App. No. C-040612.

**2005-2172. Whiteside v. Conroy.**

Franklin App. No. 05AP-123, 2005-Ohio-5098.

**2005-2175. State v. Brown.**

Delaware App. No. 2005CAA01002, 2005-Ohio-5639.

**2005-2180. State v. Richeimer.**

Delaware App. No. 05CAA080060.

**2005-2184. Landskroner v. Landskroner.**

Cuyahoga App. No. 85060, 2005-Ohio-4582.

**2005-2187. Paul Davis Restoration of Cleveland Metro W. v. Karaman.**

Cuyahoga App. No. 84824, 2005-Ohio-4017.

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

**2005-2191. State v. Rogers.**

Huron App. Nos. H-04-030 and H-04-042, 2005-Ohio-5358.

**2005-2198. Stearns v. Elam.**

Cuyahoga App. No. 85925, 2005-Ohio-4995.

**2005-2202. WC Milling, LLC v. Grooms.**

Adams App. No. 03CA783, 164 Ohio App.3d 45, 2005-Ohio-5420.

Resnick and Pfeifer, JJ., dissent.

**2005-2207. Smith v. Jewett.**

Richland App. No. 04 CA 96, 2005-Ohio-3982.

**2005-2213. Bettinger v. Bettinger.**

Summit App. No. 22621, 2005-Ohio-5389.

**2005-2214. Popp v. Integrated Electrical Servs., Inc.**

Butler App. No. CA2005-03-058, 2005-Ohio-5367.

Moyer, C.J., and Resnick, J., dissent.

**2005-2219. Wright v. Peyton.**

Perry App. No. 04CA17, 2005-Ohio-5468.

Lundberg Stratton, J., dissents.

**2005-2224. State v. Villa-Garcia.**

Franklin App. No. 05AP-997.

**2005-2225. State v. Lazzaro.**

Cuyahoga App. No. 84956, 2005-Ohio-4118.

Pfeifer, J., dissents.

**2005-2226. State v. Boyle.**

Portage App. Nos. 2004-P-0099, 2004-P-0100, and 2004-P-0101, 2005-Ohio-5493.

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

**2005-2227. State v. Knox.**

Cuyahoga App. No. 85772, 2005-Ohio-5347.

**2005-2228. Dunaway v. U.S. Financial Life Ins. Co.**

Clermont App. No. CA2005-02-012, 2005-Ohio-5775.

**2005-2231. State v. Estes.**

Preble App. No. CA2005-02-001, 2005-Ohio-5478.

**2005-2232. State v. Castle.**

Franklin App. Nos. 05AP-105 and 05AP-106, 2005-Ohio-5423.

**2005-2233. State v. Robinson.**

Cuyahoga App. No. 85207, 2005-Ohio-5132.

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

**2005-2234. Medina v. Harold J. Becker Co., Inc.**

Hamilton App. No. C-050041, 163 Ohio App.3d 832, 2005-Ohio-5438. Discretionary appeal not accepted.

Lundberg Stratton and O'Connor, JJ., dissent and would accept the appeal on Proposition of Law No. I.

On motion for admission pro hac vice of Rene B. Heinrich by Mary Jill Donovan. Motion granted.

**2005-2237. State v. Harris.**

Cuyahoga App. No. 85544, 2005-Ohio-5195.

**2005-2240. S. Ohio Gun Distrib., Inc. v. City Agency, Inc.**

Warren App. No. CA2004-09-116, 2005-Ohio-5366. Discretionary appeal not accepted.

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

On motion for admission pro hac vice of Phillip M. Hudson III by John S. Mengle. Motion granted.

**2005-2241. C.J. Mahan Constr. Co. v. Mohawk Re-Bar Servs., Inc.**

Stark App. No. 2004CA00387, 2005-Ohio-5427.

**2005-2244. State v. James.**

Hardin App. No. 6-05-02, 2005-Ohio-4445.

**2005-2245. State v. Ward.**

Henry App. No. 7-05-07.

**2005-2246 State v. Long.**

Hamilton App. No. C-040643. Discretary appeal not accepted. Motion for stay of the jurisdictional question pending outcome of appellant's application for reopening denied as moot.

O'Connor, J., dissents.

**2005-2252. Schuler v. Schuler.**

Union App. No. 14-05-04, 2005-Ohio-5466.

Resnick, J., dissents.

**2005-2256. Swank v. Estate of Swank.**

Richland App. Nos. 2004CA0110, 2004CA0111 and 2004CA0112, 2005-Ohio-5524.

Pfeifer, J., dissents.

**2005-2274. Morrison v. Petro Evaluation Servs., Inc.**

Morrow App. No. 2004 CA 0004, 2005-Ohio-5640.

**2005-2278. State v. Young.**

Warren App. No. CA2005-01-006, 2005-Ohio-6162.

**2005-2288. State v. Coleman.**

Lorain App. No. 05CA008810.

**2005-2291. State v. Stillman.**

Fairfield App. No. 2005-CA-55, 2005-Ohio-6299.

**2005-2294. State v. Henley.**

Montgomery App. No. 20789, 2005-Ohio-6142.

**2005-2295. State v. Galyen.**

Clark App. No. 05-CA-111.

**2005-2296. Muehrcke v. Housel.**

Cuyahoga App. Nos. 85643 and 85644, 2005-Ohio-5440.

Lundberg Stratton, J., dissents.

**2005-2306. State v. Vilardo.**

Hamilton App. No. C-050812.

**2005-2316. State v. Trent.**

Stark App. No. 2004CA00360, 2005-Ohio-5793.

**2005-2318. Simon v. Encompass Ins. Co.**

Cuyahoga App. No. 86143, 2005-Ohio-5727.

Resnick, J., not participating.

**2005-2344. State v. Byrd.**

Cuyahoga App. No. 85868, 2005-Ohio-5558.

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

**2005-2371. Beheshtaein v. Am. States Ins. Co.**

Montgomery App. No. 20839, 2005-Ohio-5907.

Resnick and O'Connor, JJ., not participating.

**2005-2389. Am. Church Builders v. Christian Fellowship Ctr.**

Franklin App. No. 05AP-219, 2005-Ohio-6056.

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

**2005-2398. State v. Horton.**

Franklin App. No. 03AP-665, 2005-Ohio-458.

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

**2005-2412. State v. Ferrell.**

Cuyahoga App. No. 85821, 2005-Ohio-5992.

**2006-0009. State v. McCauley.**

Cuyahoga App. No. 81328, 2005-Ohio-6093.

**2006-0098. State v. Yates.**

Summit App. No. 21790, 2005-Ohio-4094.

**2006-0101. State v. Rippey.**

Franklin App. No. 04AP-960, 2005-Ohio-2639.

## RECONSIDERATION OF PRIOR DECISIONS

**2004-0052. Higbee Co. v. Cuyahoga Cty. Bd. of Revision.**

Board of Tax Appeals, Nos. 2002-T-2552, 2002-T-2569, and 2002-T-2571. Reported at 107 Ohio St.3d 325, 2006-Ohio-2, 839 N.E.2d 385. On motion for reconsideration. Motion denied.

**2004-1145. Jaylin Investments, Inc. v. Moreland Hills.**

Cuyahoga App. No. 82739, 157 Ohio App.3d 277, 2004-Ohio-2689. Reported at 107 Ohio St.3d 339, 2006-Ohio-4, 839 N.E.2d 903. On motion for reconsideration. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.