

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

March 26, 2008

[Cite as *03/26/2008 Case Announcements*, 2008-Ohio-1279.]

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## MERIT DECISIONS WITH OPINIONS

**2006-1061 and 2006-1069. Minster Farmers Coop. Exchange Co., Inc. v. Meyer, Slip Opinion No. 2008-Ohio-1259.**

Shelby App. Nos. 17-05-32, 2006-Ohio-1886, and 17-05-28, 2006-Ohio-1887. Judgments reversed and causes remanded.

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

Lundberg Stratton, J., concurs in judgment only.

Peggy L. Bryant, J., of the Tenth Appellate District, sitting for Cupp, J.

**2006-2263. State ex rel. Am. Legion Post 25 v. Ohio Civ. Rights Comm., Slip Opinion No. 2008-Ohio-1261.**

Fayette App. No. CA2006-01-006, 171 Ohio App.3d 476, 2006-Ohio-5509. Judgment affirmed.

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

**2007-0268. State v. Smith, Slip Opinion No. 2008-Ohio-1260.**

Hamilton App. No. C-060077, 2006-Ohio-6980. Judgment affirmed.

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

Pfeifer, J., dissents.

**2007-1865. State v. Aleshire, Slip Opinion No. 2008-Ohio-1272.**

Licking App. No. 2007-CA-1, 2007-Ohio-4446. Judgment reversed, guilty plea vacated, and cause remanded for new trial.

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

Lanzinger, J., dissents.

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

## **MERIT DECISIONS WITHOUT OPINIONS**

### **2008-0080. State ex rel. Brown v. Rogers.**

In Mandamus. On respondents' motion to dismiss and relator's amended motion for stay. Motion to dismiss granted. Motion for stay denied. Cause dismissed.

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

Cupp, J., not participating.

### **2008-0112. State ex rel. Madison v. Connors.**

In Mandamus. On complaint in mandamus of Oliver Madison. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

O'Donnell, J., dissents and would grant an alternative writ.

### **2008-0274. Coulter v. Elum.**

In Prohibition. On complaint in prohibition of Justin Coulter. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

## **MOTION AND PROCEDURAL RULINGS**

### **2006-2056. State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland.**

In Mandamus. On relators' bill and documentation in support of attorney fees and respondents' objections to attorney fees. Attorney fees in the amount of \$19,039. are awarded.

### **2007-0705. McFadden v. Cleveland State Univ.**

Franklin App. No. 06AP-638, 2007-Ohio-298, and 170 Ohio App.3d 142, 2007-Ohio-939. On motion for admission pro hac vice of Benjamin C. Mizer by William P. Marshall. Motion granted.

**2007-2325. State ex rel. Gilmour Realty, Inc. v. Mayfield Hts.**

Cuyahoga App. No. 90575, 2007-Ohio-6480. On relator's motion for stay of court of appeals' judgment. Motion denied.

On respondents' motion for sanctions and attorney fees. Request for attorney fees granted. Appellee's counsel shall submit a bill and documentation in support of the award of attorney fees within ten days of the date of this entry, and appellant may file objections to appellee's bill and documentation within ten days of filing of the bill.

Pfeifer, O'Connor, and O'Donnell, JJ., dissent and would not award attorney fees.

**2008-0152. State ex rel. Baker v. Tri-Rivers Educational Computer Assn.**

In Mandamus. On motion to dismiss. Sua sponte, an alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondents shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within ten days after filing of respondents' brief.

Moyer, C.J., and O'Donnell and Lanzinger, JJ., dissent and would dismiss the cause.

**2008-0273. State v. Blandin.**

Allen App. No. 1-06-107, 2007-Ohio-6418. On motion for leave to file delayed appeal. Motion granted.

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

**2008-0279. State v. Diaz.**

Lucas App. No. L-05-1381, 2007-Ohio-4480. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2008-0283. Ohio Edison Co. v. Williams.**

Summit App. No. 23530, 2007-Ohio-5028. On emergency motion for stay of court of appeals' judgment. Motion denied.

**2008-0290. State v. Frazer.**

Cuyahoga App. No. 89097, 2007-Ohio-5954. On motion for leave to file delayed appeal. Motion granted.

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

**2008-0299. State v. Brown.**

Darke App. No. 1700, 2007-Ohio-4544. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2008-0313. State v. Rosemond.**

Hamilton App. No. C-060578, 2007-Ohio-6333. On motion for leave to file delayed appeal. Motion granted.

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

**2008-0317. State v. Wade.**

Lucas App. No. L-07-1198, 2007-Ohio-6891. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Lanzinger, JJ., dissent.

**2008-0335. State v. Bevins.**

Hamilton App. No. C-050754, 2006-Ohio-6974. On motion for leave to file delayed appeal. Motion denied.

**2008-0336. State v. Howald.**

Union App. No. 14-07-25, 2007-Ohio-6152. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2008-0340. State v. Land.**

Auglaize App. No. 2-07-20, 2007-Ohio-6963. On motion for leave to file delayed appeal. Motion granted.

O'Connor, J., dissents.

**2008-0341. State v. Berry.**

Franklin App. No. 06AP-45, 2006-Ohio-5875. On motion for leave to file delayed appeal. Motion denied.

**2008-0353. State v. Kepiro.**

Franklin App. No. 06AP-1302, 2007-Ohio-4593. On motion for leave to file delayed appeal. Motion granted.

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

**2008-0425. Dunn v. Smith.**

In Habeas Corpus. On petition for writ of habeas corpus of Andrew Dunn.

Sua sponte, the writ is allowed. Allowing the writ means only that a return is ordered. See *Reed v. Kinkela* (1998), 84 Ohio St.3d 1427, 702 N.E.2d 903; *Hernandez v. Kelly*, 107 Ohio St.3d 1430, 2005-Ohio-6400, 838 N.E.2d 670.

Respondent shall file a return of writ within 21 days of service of the petition and petitioner may file a response within ten days after the return is filed. Petitioner's physical presence before the court will not be required.

O'Connor and O'Donnell, JJ., dissent and would dismiss the cause.

**APPEALS ACCEPTED FOR REVIEW**

**2007-2193. State v. Bartrum.**

Summit App. No. 23549, 2007-Ohio-5410.

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

**2007-2232. State v. Peterson.**

Montgomery App. No. 22008, 173 Ohio App.3d 575, 2007-Ohio-5667.

Pfeifer, Lanzinger, and Cupp, JJ., dissent.

**2007-2310. State v. Jones.**

Stark App. No. 2007 CA 00139, 2007-Ohio-5818. Discretionary appeal accepted and cause consolidated with 2007-2311, *State v. Skropits*, Stark App. No. 2007 CA 00098, 2007-Ohio-5817.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2007-1404. Krause v. Bislich.**

Lorain App. No. 06CA008937, 2007-Ohio-2983. Discretionary appeal not accepted. Motion for stay denied as moot.

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

**2007-1487. Parrish v. Coles.**

Franklin App. Nos. 06AP-696 and 07AP-720, 2007-Ohio-3229.

**2007-2012. State v. Odavar.**

Cuyahoga App. No. 89029, 2007-Ohio-5535.

**2007-2154. State ex rel. Lopez v. Deters.**

Hamilton App. No. C-061057.

**2007-2159. State v. Gordon.**

Muskingum App. No. CT2007-0011, 2007-Ohio-5545.

**2007-2163. State v. Wells.**

Warren App. No. CA2006-11-129, 2007-Ohio-5388.

**2007-2183. Tingler v. C.J. Mahan Constr. Co.**

Stark App. No. 2007CA00086, 2007-Ohio-5463.

**2007-2185. State v. Collins.**

Clermont App. No. CA2007-01-010, 2007-Ohio-5392.

O'Connor, J., dissents.

**2007-2194. State v. Lopez.**

Lucas App. No. L-06-1243, 2007-Ohio-5473.

**2007-2197. State v. Ballard.**

Hamilton App. No. C-061077.

**2007-2200. Flatt v. Atwood Manor Nursing Ctr.**

Crawford App. No. 3-06-26, 2007-Ohio-5387.

**2007-2203. State v. Comsa.**

Washington App. No. 06CA21, 2007-Ohio-5561.

O'Donnell, J., dissents.

**2007-2209. Martin v. Henderson.**

Richland App. No. 07CA28, 2007-Ohio-5467.

**2007-2211. State v. Cullins.**

Montgomery App. No. 21881, 2007-Ohio-5978.

**2007-2214. State v. Lester.**

Auglaize App. No. 2-07-23, 2007-Ohio-5627.

**2007-2216. State v. Raleigh.**

Licking App. No. 2007-CA-31, 2007-Ohio-5515.

**2007-2219. Mattingly v. Grant Joint Vocational School.**

Clermont App. No. CA2007-04-056.

**2007-2221. State v. Watson.**

Licking App. No. 07CA107.

**2007-2223. State v. Smith.**

Summit App. No. 23554, 2007-Ohio-5673.

**2007-2226. State v. Paige.**

Hamilton App. No. C-980704.

**2007-2230. Cincinnati Ins. Co. v. ACE INA Holdings, Inc.**

Hamilton App. Nos. C-060384 and C-060385, 2007-Ohio-5576. Discretionary appeal not accepted.

Lundberg Stratton, J., dissents.

Motion for admission pro hac vice of William M. Cohn, Brian C. Coffey, and Erin E. O'Brien by Gregory A. Harrison granted.

**2007-2231. State v. Hutton.**

Cuyahoga App. No. 80763, 2007-Ohio-5443.

**2007-2235. Ridenour v. Wilkinson.**

Franklin App. No. 07AP-200, 2007-Ohio-5965.

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

**2007-2238. State v. Dillard.**

Montgomery App. No. 21704, 173 Ohio App.3d 373, 2007-Ohio-5651.

O'Donnell, J., dissents.

**2007-2246. State v. Rowbotham.**

Mahoning App. No. 06 MA 59.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I and III and hold the cause for the decision in 2007-0656 and 2007-0657, *State v. Veney*, Franklin App. No. 06AP-523, 2007-Ohio-1295.

O'Connor, J., dissents and would accept the appeal and hold the cause for the decision in *State v. Veney*.

**2007-2248. State v. Haught.**

Pickaway App. No. 06CA30, 2007-Ohio-5736.

**2007-2250. Aultcare Corp. v. Roach.**

Stark App. No. 2007CA0009, 2007-Ohio-5686.

**2007-2251. Encompass Ins. Co. of Am. v. Reeder.**

Summit App. No. 23775, 2007-Ohio-5675.

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

Cupp, J., dissents.

**2007-2253. State v. Bolling.**

Montgomery App. No. 21874, 2007-Ohio-5976.

**2007-2256. State v. Turner.**

Cuyahoga App. No. 88489, 2007-Ohio-3264, and 2007-Ohio-5449.

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

**2007-2258. State v. Kennedy.**

Hamilton App. Nos. C-060579 and C-060580.

**2007-2259. State v. McClaskey.**

Pickaway App. No. 06CA24, 2007-Ohio-5867.

**2007-2260. State v. Graves.**

Cuyahoga App. No. 88845, 2007-Ohio-5430.

Moyer, C.J., dissents.

**2007-2261. State v. Glover.**

Washington App. No. 07CA17, 2007-Ohio-5868.

**2007-2267. State v. Merrifield.**

Hamilton App. No. C-060764.

O'Connor, J., dissents.

**2007-2268. Ross v. William E. Platten Contracting Co.**

Cuyahoga App. No. 88749, 2007-Ohio-5733.

O'Connor, J., not participating.

**2007-2272. Hundemer v. Partin.**

Clermont App. No. CA2007-01-006, 2007-Ohio-5631.

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

**2007-2274. State v. Schuler.**

Hamilton App. No. C-060864.

**2007-2276. Wadley v. Knowlton Mfg. Co.**

Hamilton App. No. C-061045, 2007-Ohio-5739.

Pfeifer, J., dissents.

**2007-2277. State v. Collins.**

Summit App. No. 23662, 2007-Ohio-5674.

**2007-2278. State v. Ford.**

Cuyahoga App. Nos. 88946 and 88947, 2007-Ohio-5722.

**2007-2284. Bowling Green v. Bourne.**

Wood App. No. WD-07-007, 2007-Ohio-5748.

Pfeifer and O'Donnell, JJ., dissent.

**2007-2290. Lassiter v. Lassiter.**

Hamilton App. No. C-070048.

**2007-2292. In re Cole.**

Cuyahoga App. No. 89089, 2007-Ohio-5730.

**2007-2296. CityLink Ctr. v. Cincinnati.**

Hamilton App. Nos. C-061037, C-061054, and C-061064, 2007-Ohio-5873.

**2007-2297. State v. Stephens.**

Franklin App. No. 07AP-682.

**2007-2301. State v. Heard.**

Hamilton App. Nos. C-060862, C-060900, and C-060928, 2007-Ohio-5872.

**2007-2304. State v. Johnson.**

Lake App. No. 2006-L-259, 2007-Ohio-5783.

**2007-2305. Yoder v. Thorpe.**

Franklin App. No. 07AP-225, 2007-Ohio-5866.

O'Donnell, J., dissents.

**2007-2306. State v. Hairston.**

Franklin App. Nos. 07AP-160 and 07AP-161, 2007-Ohio-5928. Discretionary appeal and cross-appeal not accepted.

Moyer, C.J., dissents and would accept the cross-appeal.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law Nos. I and II and the cross-appeal.

Cupp, J., dissents and would accept the cross-appeal on Proposition of Law Nos. II and III.

**2007-2312. State v. Betts.**

Cuyahoga App. No. 88607, 2007-Ohio-5533.

**2007-2314. In re B.F.**

Warren App. Nos. CA2006-10-118 and CA2006-11-137.

**2007-2315. State v. Orsborne.**

Allen App. No. 1-06-94, 2007-Ohio-5776.

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

**2007-2316. State v. Miller.**

Washington App. No. 07CA2, 2007-Ohio-5931.

**2007-2327. State v. Martin.**

Cuyahoga App. No. 89030, 2007-Ohio-6062.

**2007-2328. State v. McGlothlin.**

Hamilton App. No. C-060145, 2007-Ohio-4707.

O'Connor, J., dissents.

**2007-2330. In re Grubbs.**

Guernsey App. No. 07 CA 2, 2007-Ohio-5807.

**2007-2332. State v. Tabor.**

Franklin App. No. 07AP-267, 2007-Ohio-5796.

Cupp, J., not participating.

**2007-2333. State v. Smith.**

Hamilton App. No. C-070728.

**2007-2340. State v. Garner.**

Franklin App. No. 07AP-429, 2007-Ohio-5865.

**2007-2346. State v. Ervin.**

Cuyahoga App. No. 88618, 2007-Ohio-5942.

**2007-2360. State v. Kendrick.**

Montgomery App. No. 21790, 2007-Ohio-6136.

**2007-2362. Boila v. Nationwide Mut. Ins. Co.**

Mahoning App. No. 06 MA 166, 2007-Ohio-6071.

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

**2007-2364. Kemp v. Kemp.**

Stark App. No. 2007-CA-0045, 2007-Ohio-6116.

**2007-2367. State v. Conte.**

Franklin App. No. 07AP-33, 2007-Ohio-5924.

**2007-2370. Butler Cty. Joint Vocational School Dist. Bd. of Edn. v. Andrews.**

Butler App. No. CA2006-10-245, 2007-Ohio-5896.

**2007-2397. State v. Kemp.**

Clark App. No. 2006 CA 116, 2007-Ohio-5985.

**2007-2404. State v. D.H.**

Franklin App. No. 07AP-73, 2007-Ohio-5970.

**2007-2406. State v. Cummings.**

Butler App. No. CA2007-03-055.

**2007-2427. Grady v. Progressive Business Compliance.**

Cuyahoga App. No. 89350, 2007-Ohio-6078.

Lundberg Stratton, J., dissents.

**2007-2440. State v. Carson.**

Franklin App. No. 07AP-492, 2007-Ohio-6382.

**2008-0012. State v. King.**

Franklin App. No. 07AP-230, 2007-Ohio-5406.

**2008-0036. Reznickcheck v. N. Cent. Corr. Inst.**

Marion App. No. 9-07-22, 2007-Ohio-6425.

**2008-0143. State v. Hairston.**

Scioto App. No. 06CA3087, 2007-Ohio-4159.

**2008-0153. State v. Thornton.**

Summit App. No. 23417, 2007-Ohio-3743.

**2008-0243. State v. Liddle.**

Summit App. No. 23287, 2007-Ohio-1820.

**RECONSIDERATION OF PRIOR DECISIONS**

**2006-1889. State ex rel. Mosier Indus. Servs. Corp. v. Indus. Comm.**

Franklin App. No. 05AP-1096, 2006-Ohio-4620. Reported at 117 Ohio St.3d 1201, 2008-Ohio-260, 881 N.E.2d 267. On motion for reconsideration. Motion denied.

**2007-1688. Lee v. Margulies.**

Hamilton App. No. C-070478. Reported at 116 Ohio St.3d 1475, 2008-Ohio-153, 879 N.E.2d 783. On motion for reconsideration. Motion denied.

**2007-1750. Stuber v. Stuber.**

Allen App. No. 1-06-101, 2007-Ohio-3981. Reported at 116 Ohio St.3d 1476, 2008-Ohio-153, 879 N.E.2d 784. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

**2007-1791. In re D.S.**

Cuyahoga App. No. 88709, 2007-Ohio-3911. Reported at 116 Ohio St.3d 1476, 2008-Ohio-153, 879 N.E.2d 784. On motion for reconsideration. Motion denied.

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

**2007-1817. Westgate Ford Truck Sales, Inc. v. Ford Motor Co.**

Cuyahoga App. No. 86596, 2007-Ohio-4013. Reported at 116 Ohio St.3d 1477, 2008-Ohio-153, 879 N.E.2d 784. On motion for reconsideration and motion to strike motion for reconsideration. Motions denied.

Lundberg Stratton, J., dissents and would grant the motion for reconsideration.

**2007-1832. Roe v. Planned Parenthood Southwest Ohio Region.**

Hamilton App. No. C-060557, 2007-Ohio-4318. Reported at 116 Ohio St.3d 1477, 2008-Ohio-153, 879 N.E.2d 785. On motion for reconsideration. Motion granted. Discretionary appeal accepted on Proposition of Law Nos. II, IV, V, and VI.

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

**2007-1916. Cuyahoga Metro. Hous. Auth. v. SEIU Local 47.**

Cuyahoga App. No. 88893, 2007-Ohio-4292. Reported at 116 Ohio St.3d 1479, 2008-Ohio-153, 879 N.E.2d 786. On motion for reconsideration. Motion denied.

**2007-2170. State ex rel. Hytower v. Beightler.**

In Habeas Corpus. Reported at 116 Ohio St.3d 1470, 2008-Ohio-153, 879 N.E.2d 780. On motion for reconsideration. Motion denied.

**2007-2207. DiStasio v. State.**

In Habeas Corpus. Reported at 116 Ohio St.3d 1471, 2008-Ohio-153, 879 N.E.2d 780. On motion for reconsideration. Motion denied.

**2007-2291. Gonzales v. Smith.**

In Habeas Corpus. Reported at 116 Ohio St.3d 1471, 2008-Ohio-153, 879 N.E.2d 780. On motion for reconsideration. Motion denied.