

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

May 27, 2020

[Cite as *05/27/2020 Case Announcements #2*, 2020-Ohio-3017.]

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## APPEALS NOT ACCEPTED FOR REVIEW

### **2020-0298. *State v. Kirk*.**

Clermont App. No. CA2019-07-053, 2020-Ohio-323.

Stewart, J., dissents, with an opinion joined by Donnelly, J.

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#### **STEWART, J., dissenting.**

{¶ 1} I respectfully disagree with the court's decision not to accept this jurisdictional appeal. In this case, we are asked to clarify the law regarding under what circumstances does a citizen's consensual encounter with a police officer (during which the citizen is free to leave) become an investigative detention (during which the citizen is not free to leave). The issue implicates concerns regarding public safety, officer safety, and constitutionally protected liberties. And this court has said little on the issue in the last two decades despite changes in police training and public attitudes and increased social tensions, not to mention continued divided opinions on the issue in Ohio's appellate courts, *see, e.g., State v. Wertz*, 2017-Ohio-8766, 89 N.E.3d 667 (2d Dist.) (two-to-one decision ruling that an encounter between the defendant and the police was not consensual and reversing the trial court's denial of the defendant's motion to suppress), *appeal not accepted*, 152 Ohio St.3d 1464, 2018-Ohio-1795, 97 N.E.3d 500; *see also State v. Scarberry*, 2016-Ohio-7065, 72 N.E.3d 173 (10th Dist.), *appeal not accepted*, 149 Ohio St.3d 1419, 2017-Ohio-4038, 75 N.E.3d 236. By not accepting jurisdiction of this case, we abandon our duty to guide the lower courts and the public on an issue of great general interest and constitutional import. Because this case offers us an opportunity to fulfill that duty, I would accept it for review.

DONNELLY, J., concurs in the foregoing opinion.

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