

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY  
December 20, 1995

MERIT DOCKET

95-2212. State ex rel. McClellan v. Young.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2218. State ex rel. Woodgeard v. Fairfield Cty. Court of Common Pleas.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2242. State ex rel. Richie v. Richland Cty. Court of Common Pleas.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

95-2338. State ex rel. Pocius v. Parks.  
In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.  
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND DISCRETIONARY  
APPEALS, IF APPLICABLE, NOT ALLOWED

94-1650. Jackson v. Plainville Concrete, Inc.  
Clermont County, No. CA93-10-075.  
Resnick, J., dissents.

95-1480. State v. Weigand.  
Tuscarawas County, No. 94AP050033.

95-1734. In re East.  
Cuyahoga County, No. 67955.

95-1740. State v. Taylor.  
Lorain County, No. 94CA005984.

95-1801. Martin v. Wayne Mut. Ins. Co.  
Wayne County, No. 2921.  
Wright, J., dissents.

95-1825. State v. Six.  
Medina County, No. 2392-M.

95-1842. State v. Perry.  
Cuyahoga County, No. 67497.

95-1855. Schwinn v. Nationwide Mut. Fire Ins. Co.  
Lorain County, No. 94CA005993.  
Wright, J., dissents.

95-1861. Columbia Gas Transm. Corp. v. Ohio Dept. of Transp.  
Franklin County, No. 94APE10-1430.  
Moyer, C.J., dissents.

95-1863. State v. Stevens.  
Summit County, No. 16998.  
Resnick, J., dissents.

95-1869. State v. Heflin.  
Montgomery County, No. 14323.

95-1873. Chester v. Baker.  
Licking County, No. 95CA7.

95-1876. State v. Mays.  
Ross County, No. 94CA2076.  
Moyer, C.J., and Cook, J., dissent.

95-1877. State v. Graham.  
Licking County, No. 94CA65.

95-1879. Jackson v. Kelly.  
Logan County, No. 8-95-5.  
Wright, J., dissents.

95-1886. State v. Roberson.  
Stark County, No. CA9272.

95-1894. State v. Fink.  
Fayette County, No. CA94-10-009.

95-1895. State v. Weeden.  
Richland County, No. 94CA52.  
Pfeifer, J., dissents.

95-1901. State v. Beasley.

Hamilton County, No. C-940899.  
Douglas, J., dissents.

95-1904. State v. McCullough.  
Cuyahoga County, No. 67786.

95-1918. State v. McGlothlin.  
Montgomery County, No. CA-14687.

95-1929. State ex rel. Whitaker v. Mehring.  
Defiance County, No. 4-94-14.

95-1931. State v. Pence.  
Butler County, No. CA94-11-210.

95-1944. State v. Kuehne.  
Hamilton County, No. C-940380.  
Pfeifer, J., dissents.

95-1963. State v. Isham.  
Montgomery County, No. 15136.

95-1966. State v. Clay.  
Franklin County, No. 95APA01-89.  
Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

95-1972. Patierno v. Patierno.  
Mahoning County, No. 92 C.A. 160.

95-1977. Hickey v. Hancock-Wood Elec. Coop., Inc.  
Wood County, No. WD94112.  
Resnick, J., not participating.

95-2018. Mihalenko v. Merrill Lynch, Pierce, Fenner & Smith.  
Cuyahoga County, No. 68682.

95-2027. In re Annexation of 561.590 Acres of Land in Perry Twp.  
Stark County, No. 1994CA00358. Discretionary appeal and cross-appeal denied.  
Moyer, C.J., and Douglas, J., dissent.

95-2063. State v. Engels.  
Hamilton County, No. C-940870.

95-2075. State v. Tucker.  
Cuyahoga County, No. 68206.

#### MOTION DOCKET

95-782 and 95-784. In re Estate of Cross.  
Cuyahoga County, No. 66503. On motion to participate in oral argument and to  
file additional authorities. Motion denied.  
Douglas, J., would grant the motion to participate only.  
Pfeifer, J., dissents.

95-953. White v. Clinton Cty. Bd. of Commrs.  
Clinton County, No. CA94-08-020. On motion to participate in oral argument.

Moyer, C.J., F.E. Sweeney and Cook, JJ., would deny.  
Douglas, Resnick and Pfeifer, JJ., would grant.  
Wright, J., not participating.  
The motion fails for want of four votes.

95-1060. State v. Allard.  
Knox County, No. 937. On motion for appointment of special prosecutor. Motion denied.  
Douglas, J., would grant and order payment from the prosecuting attorney's budget.

95-1447. Zalud Oldsmobile Pontiac, Inc. v. Tracy.  
Board of Tax Appeals, No. 94-M-24. On request for argument before full court. Request granted.  
Cook, J., dissents.  
Wright, J., not participating.  
Sua sponte, cause consolidated with 95-1690, Jack Schmidt Lease, Inc. v. Tracy, Board of Tax Appeals, No. 94-M-13.  
Wright, J., not participating.

95-2228. State v. Mitchell.  
Cuyahoga County, No. 56575. On motion to withdraw notice of appeal and memorandum in support of jurisdiction. Motion granted.

95-2369. State v. Eason.  
Cuyahoga County, No. 66060. On motion for leave to file delayed appeal by Elroy Eason. Motion granted.  
F.E. Sweeney and Cook, JJ., dissent.

95-2370. State v. Anderson.  
Cuyahoga County, No. 66544. On motion for leave to file delayed appeal. Motion granted.  
Wright, F.E. Sweeney and Cook, JJ., dissent.

95-2380. State v. Green.  
Hamilton County, No. C-950506. On motion for leave to file delayed appeal. Motion denied.  
Moyer, C.J., and Douglas, J., dissent.

95-2381. State v. Howard.  
Cuyahoga County, No. 69435. On motion for leave to file delayed appeal. Motion granted.  
Resnick, F.E. Sweeney and Cook, JJ., dissent.

95-2383. State v. McGee.  
Lorain County, No. 94CA006011. On motion for leave to file delayed appeal. Motion denied.  
Moyer, C.J., and Douglas, J., dissent.

95-2406. State v. Alexander.  
Muskingum County, Nos. CA-9134 and CA-9135. On motion for leave to file delayed appeal. Motion denied.

95-2413. State v. Schofield.  
Lucas County, No. L-94-020. On motion for leave to file delayed appeal. Motion granted.

Wright and F.E. Sweeney, JJ., dissent.  
Resnick, J., not participating.

95-2440. State v. Elfrink.

Franklin County, No. 95APC033-64. On review of order certifying a conflict. The court determines that a conflict exists; issue 1 is held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed. The parties are to brief issue 2, stated at page 3 of the court of appeals' Memorandum Decision dated October 31, 1995:

"[W]hether the failure of authorities to advise a defendant of his right to obtain an independent blood or chemical test pursuant to R.C. 4511.19(D)(3) requires suppression of the test results. [Conflicting case: State v. Thurman (June 28, 1995), Montgomery App. No. 14741, unreported, 1995 WL 386820]."

#### DISCRETIONARY APPEALS ALLOWED

95-1828. Columbus v. Copley.

Franklin County, No. 94APC06-756. Sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed.

Douglas, Resnick and Cook, JJ., dissent.

95-1884. State v. Jones.

Montgomery County, No. 14649.

Wright and Cook, JJ., dissent.

95-1924. Hill v. Urbana.

Champaign County, No. 94CA22.

Wright and F.E. Sweeney, JJ., dissent.

95-1925. Harbeitner v. Ohio Dept. of Commerce.

Cuyahoga County, No. 68483.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

#### DISCRETIONARY APPEALS NOT ALLOWED

95-1749. Hall v. Fairmont Homes, Inc.

Ross County, No. 94CA2035. (Appeal of Fairmont Homes, Inc.; second appeal by Georgia-Pacific Corporation; third appeal by Chesapeake Hardwood Products, Inc.; fourth appeal by Weyerhaeuser Company.)

Douglas and Wright, JJ., dissent.

95-1812. State v. Shoudt.

Ottawa County, No. OT-95-007.

Wright, J., dissents.

95-1817. Bushman v. MFC Drilling, Inc.

Medina County, No. 2403-M.

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

95-1826. Fiske v. Rooney.

Scioto County, No. 94CA2269.

95-1829. Howard L. Leis Fine Furniture & Carpeting v. Close.

Huron County, No. H-94-027.

F.E. Sweeney, J., dissents.

95-1832. State v. Bailey.

Lorain County, No. 94CA005964.

95-1852. Mintier v. Continental Ins. Co.  
Franklin County, No. 94APE12-1820.  
Douglas, J., dissents.

95-1859. Pointer v. Akron.  
Summit County, No. 16955.

95-1870. Corrado Constr. Co. v. Petros Homes, Inc.  
Cuyahoga County, No. 67662.

95-1872. Cunningham v. A-Best Products Co.  
Washington County, Nos. 94CA29, 94CA30, 94CA31, 94CA32 and 94CA33.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

95-1881. Donovan v. State Farm Auto. Ins. Co.  
Allen County, No. 1-94-80.  
Pfeifer, J., dissents.

95-1887. Pochatek v. Minoff.  
Cuyahoga County, No. 67983.

95-1888. In re Estate of Mayer.  
Lucas County, No. L-93-131.  
Douglas and Pfeifer, JJ., dissent.

95-1889. Edley v. Cross Roads Auto Mile Ford.  
Cuyahoga County, No. 68384.

95-1890. Ralston v. Scalia.  
Stark County, No. 1995CA00012.

95-1891. White v. Zimmers.  
Montgomery County, No. 15196.

95-1897. Wichert v. Davis.  
Summit County, No. 17003.

95-1899. State v. Shough.  
Montgomery County, No. 14849.

95-1905. Durham Ridge Coal Co. v. R.B.S., Inc.  
Hamilton County, No. C-940283.

95-1910. McKenney v. Hillside Dairy Co.  
Cuyahoga County, No. 69038.  
Wright, J., dissents.

95-1915. Kool, Mann, Coffey & Co. v. Castellini Co.  
Hamilton County, No. C-930951.  
Wright, J., dissents.

95-1917. State v. Cromlish.  
Franklin County, No. 94APA10-1571.  
Moyer, C.J., and Douglas, J., dissent.

95-1933. Shannon v. Waco Scaffolding & Equip.  
Cuyahoga County, Nos. 67406 and 67604.

95-1948. In re Price.  
Logan County, Nos. 8-94-23, 8-94-24, 8-94-25 and 8-94-26.

#### RECONSIDERATION DOCKET

94-1964. State v. Garner.  
Hamilton County, No. C-920864. Reported at 74 Ohio St.3d 49, \_\_\_ N.E.2d \_\_\_\_.  
On motion for reconsideration. Motion denied.  
Wright, J., dissents.

94-2208. State v. Phillips.  
Summit County, No. 16487. Reported at 74 Ohio St.3d 72, \_\_\_ N.E.2d \_\_\_\_\_. On  
motion for reconsideration. Motion denied.

95-1579. State v. Jackson.  
Cuyahoga County, Nos. 67025, 67876 and 68085. Reported at 74 Ohio St.3d 1462,  
\_\_\_ N.E.2d \_\_\_\_\_. On motion for reconsideration. Motion denied.  
Wright, J., dissents.

95-1650. Fitch v. Fitch.  
Licking County, No. 94CA105. Reported at 74 Ohio St.3d 1462, \_\_\_ N.E.2d \_\_\_\_\_.  
On motion for reconsideration. Motion denied.

95-1653. New Hampshire Ins. Group v. Frost.  
Cuyahoga County, No. 67823. Reported at 74 Ohio St.3d 1464, \_\_\_ N.E.2d \_\_\_\_\_. On  
motion for reconsideration. Motion granted and discretionary appeal allowed.  
Moyer, C.J., Wright and Cook, JJ., dissent.

95-1703. Nehls v. Quad K Advertising.  
Cuyahoga County, No. 67358. Reported at 74 Ohio St.3d 1462, \_\_\_ N.E.2d \_\_\_\_\_. On  
motion for reconsideration. Motion denied.  
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

95-1958. State ex rel. Hillside Dairy Co. v. Cuyahoga Cty. Court of Common  
Pleas.  
In Mandamus and Prohibition. Reported at 74 Ohio St.3d 1461, \_\_\_ N.E.2d \_\_\_\_\_.  
On motion for reconsideration. Motion denied.  
Wright, J., dissents.

95-2086. Washington v. Hamilton Cty.  
In Mandamus. Reported at 74 Ohio St.3d 1461, \_\_\_ N.E.2d \_\_\_\_\_. On motion for  
reconsideration. Motion denied.

95-2112. State v. Prather.  
Brown County, No. CA94-08-010. Reported at 74 Ohio St.3d 1458, \_\_\_ N.E.2d \_\_\_\_\_.  
On motion for reconsideration. Motion denied.  
Moyer, C.J., Resnick and Pfeifer, JJ., dissent.

