

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY  
December 18, 1996

MERIT DOCKET

96-2082. State ex rel. Schenck v. Hutcheson.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2187. State ex rel. Greer v. Ohio Adult Parole Auth.  
In Mandamus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2192. State ex rel. Martin v. Aurelius.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2254. State ex rel. Timson v. Liston.  
In Mandamus. On motion to file exhibits to complaint, motion for issuance of peremptory writ, motion to dismiss of Ronald J. O'Brien and Robert Levering, motion for issuance of peremptory writ, motion for more definite statement, and motion for court order. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2285. State ex rel. Buhrman v. Clerk of Court, Greene Cty. Common Pleas.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2286. State ex rel. Buhrman v. Clerk of Court, Montgomery Cty. Common Pleas.  
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2326. State ex rel. Jones v. Saferin.

In Mandamus. On motion to dismiss and on motion to strike, disallow reply, and proceed to disposition. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2363. State ex rel. Smith v. Court of Appeals, Ninth Appellate Dist.  
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.  
Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2383. State ex rel. Ervin v. Ghee.  
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.  
Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2456. Billups v. Collins.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2474. State ex rel. Aaron v. Ohio State Parole Auth.  
In Habeas Corpus. On motion for preliminary injunction and motion for bond.  
Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2505. Mobley v. State.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2536. Williams v. Wilkinson.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2537. Long v. Vanvorc.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2575. Washington v. Russell.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2598. Pino v. Leonard.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2599. Finfrock v. Mohr.  
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2602. Rash v. Brigano.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-2615. Sparks v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

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

96-945. Stephens v. Jacobs.

Hamilton App. Nos. C-950467 and C-950611.

96-949. Fraternal Order of Orioles Nest 0274 v. Ohio Liquor Control Comm.

Franklin App. No. 95APE09-1260.

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

96-958. Bertka v. Wigest Corp.

Lucas App. No. L-95-211.

96-1013. State v. Chambers.

Hamilton App. No. C-950357.

96-1023. State v. Brown.

Cuyahoga App. No. 68761.

96-1037. State v. Roper.

Lawrence App. No. 94CA34.

96-1053. State v. Price.

Hamilton App. Nos. C-950372 and C-950527.

96-1140. State v. Thompson.

Allen App. No. 1-96-10.

96-1169. State v. Patterson.

Trumbull App. No. 95-T-5207.

96-1170. State v. Brumley.

Portage App. Nos. 89-P-2092 and 89-P-2099.

96-1182. Mocker v. Goldsmith.

Mahoning App. No. 94 C.A. 169.

96-1210. Nationwide Mut. Ins. Co. v. Robb.

Summit App. No. 17115.

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

96-1217. State v. Armstrong.

Scioto App. No. 95CA2346.

96-1230. State v. Cope.

Hamilton App. No. C-950671.

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

Stratton, J., not participating.

96-1242. State v. Jackson.

Hamilton App. Nos. C-950709 and C-950755.

96-1333. State v. Kulczak.

Summit App. No. 17258.

96-1358. Hill v. Briggs.

Franklin App. No. 95APE12-1614.

96-1359. Condit v. Clermont Cty. Review.

Clermont App. No. CA95-09-060.

Pfeifer, J., dissents.

96-1360. State v. Eager.

Franklin App. No. 95APA09-1165.

96-1382. Hughes v. Cleveland.

Cuyahoga App. No. 68869.

96-1392. Bundy v. Systems Research Laboratories.

Greene App. No. 95CA71.

Douglas and Pfeifer, JJ., dissent.

Resnick, J., dissents, would allow the discretionary appeal, and would reverse on authority of *Mauzy v. Kelly Services, Inc.* (1996), 75 Ohio St.3d 578, 664 N.E.2d 1272.

96-1400. State v. Thomas.

Cuyahoga App. No. 69321.

96-1402. State ex rel. Curtis v. Ashtabula Cty. Commrs.

Ashtabula App. No. 95-A-0001.

96-1404. State v. Howard.

Lucas App. No. L-95-183.

Resnick, J., not participating.

96-1416. Carroll v. Stebelton, Aranda & Snider.

Fairfield App. No. 95CA0059.

96-1420. State v. Wallace.

Hamilton App. No. C-960275.

96-1437. Swords v. Norfolk & W. Ry. Co.

Scioto App. No. 95CA2342. On motion to strike memo in support of jurisdiction and on motion to strike affidavit of Lowell Swords. Motions denied and discretionary appeal denied.

Douglas, J., dissents.

96-1439. State v. Mootispaw.

Fayette App. No. CA96-05-010.

96-1444. State v. Perkins.  
Fayette App. No. CA95-08-020.

96-1446. Wilson v. Pickerington.  
Fairfield App. No. 96CA6.

96-1456. State v. Baker.  
Franklin App. No. 90APA09-1095.

96-1474. Behrman v. Kryder Brothers, Inc.  
Henry App. No. 7-95-12.

96-1486. State v. Cook.  
Cuyahoga App. No. 68640.

96-1488. Corrado v. First Natl. Supermarkets.  
Cuyahoga App. No. 69362.

96-1490. State v. Whatley.  
Franklin App. No. 95APA10-1375.

96-1491. State v. Potts.  
Trumbull App. No. 95-T-5182.

96-1493. State v. Hunsaker.  
Auglaize App. No. 2-96-8.

96-1501. State v. Lake.  
Marion App. No. 9-95-29.

96-1502. Huffman v. Alliance.  
Stark App. No. 1995CA00253.  
Moyer, C.J., dissents.

96-1503. Steel v. Fitch.  
Fairfield App. Nos. 95CA53 and 95CA54. (Appeal of Lawrence A. Steel and Robin Steel, second appeal by Terry and Barbara Fitch.) Appeals denied.  
Resnick, Pfeifer and Cook, JJ., dissent.

96-1505. State v. Boner.  
Hamilton App. No. C-950630.

96-1507. Kilcoyne v. Plain Dealer Publishing Co.  
Cuyahoga App Nos. 68646 and 69345.

96-1514. In re Williams.  
Franklin App. No. 95APF11-1502.  
Pfeifer, J., dissents.

96-1526. State v. Whitaker.  
Lucas App. No. L-94-285. Discretionary appeal, and discretionary cross-appeal by Joe D. Whitaker denied.  
Douglas, J., would allow the cross-appeal.  
Moyer, C.J., would allow the appeal and cross-appeal.  
Resnick, J., not participating.

96-1531. State v. Stinson.  
Stark App. No. 1995CA00275.

96-1536. State v. Williams.  
Cuyahoga App. Nos. 69403, 69404, 69405 and 69406.

96-1555. State v. Davis.  
Cuyahoga App. No. 69148.

96-1556. State v. Martin.  
Cuyahoga App. No. 69554.

96-1567. Painesville Twp. v. Buss.  
Lake App. No. 94-L-101.

96-1570. Rolling Hills Landmark, Inc. v. Townsend.  
Guernsey App. No. 95CA07.  
Moyer, C.J., dissents.

96-1572. VFW Post 4235 v. Ohio Liquor Control Comm.  
Miami App. No. 95CA42.  
Moyer, C.J., Cook and Stratton, JJ., dissent and would hold this cause for  
the decision in 96-1269, AL Post 763 v. Ohio Liquor Control Comm., Greene App.  
No. 95CA78.

96-1573. State v. Salois.  
Fairfield App. No. 95CA48.  
Moyer, C.J., and Douglas, J., dissent.

96-1574. State v. Lillard.  
Cuyahoga App. No. 69242.

96-1583. State v. Farrell.  
Sandusky App. No. S-95-013.

96-1587. State v. Crosby.  
Lucas App. No. L-94-241.

96-1588. State v. Compton.  
Union App. No. 14-96-16.

96-1592. AirTouch Paging v. Tracy.  
Franklin App. No. 95APE11-1549.  
Moyer, C.J., and Pfeifer, J., dissent.

96-1595. State v. Hughey.  
Monroe App. No. 750.

96-1598. State v. Starr.  
Cuyahoga App. No. 69628.

96-1599. Dawson v. Richmond Hts. Local School Dist.  
Cuyahoga App. No. 69577.

96-1602. State v. Martin.  
Sandusky App. No. S-95-054.

96-1607. May v. Bowland.  
Hamilton App. No. C-950826.  
Stratton, J., not participating.

96-1608. Dixon v. Brown.  
Cuyahoga App. No. 66931.  
Pfeifer, J., dissents.

96-1609. State v. King.  
Cuyahoga App. No. 68978.

96-1610. State v. Dewey.  
Ashtabula App. No. 93-A-1821.

96-1614. B/D Limited Partnership v. Taco Bell Corp.  
Hamilton App. No. C-950876.  
Stratton, J., not participating.

96-1617. Reed v. MTD Products, Inc.  
Huron App. No. H-95-023.  
Stratton, J., dissents.

96-1618. Nozik v. Mentor Lagoons, Inc.  
Lake App. No. 95-L-124.

96-1620. State v. Tolbert.  
Cuyahoga App. No. 69158.

96-1621. Commercial Business Sys. v. Dayton.  
Montgomery App. No. 15598.  
Moyer, C.J., dissents.

96-1624. State v. Howard.  
Clinton App. No. CA95-12-030.  
Moyer, C.J., and Pfeifer, J., dissent.

96-1631. Murphy v. Brooklyn Acres Mut. Homes, Inc.  
Cuyahoga App. No. 68593.

96-1633. State v. Butler.  
Cuyahoga App. No. 68581.

96-1636. State v. Snyder.  
Ross App. No. 94CA2080.

96-1643. State v. Hillis.  
Hamilton App. No. C-950823.  
Pfeifer, J., dissents.

96-1644. Kirsch v. Bowling Green State Univ.  
Franklin App. No. 95API11-1476.  
Pfeifer, J., dissents.

96-1648. State v. Ralls.  
Cuyahoga App. Nos. 69641, 69642, 69643, 69644, 69645 and 69646.  
F.E. Sweeney, J., dissents.

96-1649. Villagomez v. State Farm Mut. Auto. Ins. Co.  
Putnam App. No. 12-96-2.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1651. Mayfield Village v. Linetsky.  
Cuyahoga App. No. 69804.

96-1657. State v. Cook.  
Hamilton App. Nos. C-940419 and C-940420.  
Stratton, J., not participating.

96-1659. W. Res. Mut. Ins. Co. v. Campbell.  
Lorain App. No. 95CA006222.

96-1660. State v. Rodriguez.  
Hamilton App. No. C-950590.

96-1662. State v. Staten.  
Franklin App. No. 95APA12-1664.  
Moyer, C.J., dissents.

96-1663. State v. Schultz.  
Pickaway App. No. 94CA31.

96-1664. State ex rel. Hall v. Anderson.  
Richland App. No. 96CA50.

96-1669. Keehan v. Res. Industries Corp.  
Cuyahoga App. No. 69090.

96-1670. State v. Attaway.  
Hamilton App. No. C-950727.  
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1673. State v. Spencer.  
Cuyahoga App. No. 69490.

96-1674. State v. Walker.  
Cuyahoga App. No. 69250.

96-1675. Gall v. Sinclair Community College.  
Montgomery App. No. 15597.

96-1677. State v. Raglin.  
Hamilton App. No. C-950691.

96-1682. Ohio Farmers Ins. Co. v. Commercial Ctr. Contrs. Corp.  
Champaign App. No. 95CA24.

96-1692. State v. Grasa.  
Butler App. No. CA94-12-231.



96-1694. State v. Sowards.  
Columbiana App. No. 94CA70.

96-1696. State v. Harris.  
Hamilton App. Nos. C-940414, C-940416, C-940419, C-940420, C-940424, C-940425,  
C-940431 and C-940432.

96-1698. State v. Ungerer.  
Ashland App. No. 95COA01125.  
Douglas, F.E. Sweeney and Stratton, JJ., dissent.

96-1699. State v. Lockridge.  
Hamilton App. No. C-950232.  
Resnick, J., dissents.

96-1700. Conroy v. Beck.  
Cuyahoga App. No. 69525.  
Douglas, Resnick and Pfeifer, JJ., dissent.

96-1703. Forsyth v. Forsyth.  
Montgomery App. No. 15487.

96-1704. State v. Cook.  
Hamilton App. Nos. C-940414, C-940416, C-940419, C-940420, C-940424, C-940425,  
C-940431 and C-940432.

96-1709. State v. Brewer.  
Greene App. No. 95CA96.  
Pfeifer, J., dissents.

96-1711. State v. Staneart.  
Tuscarawas App. No. 96AP010001.

96-1713. State v. Rhoades.  
Wyandot App. No. 16-96-5.

96-1717. Paylides v. Niles Gun Show, Inc.  
Stark App. No. 1995CA00207.  
Moyer, C.J., and Stratton, J., dissent.

96-1719. State v. Miller.  
Franklin App. No. 95APA10-1335.  
Stratton, J., not participating.

96-1721. Guess v. Stoughton.  
Fairfield App. No. 95CA15.

96-1722. State v. Massey.  
Stark App. No. 1995CA00295.

96-1723. State v. Badgett.  
Hamilton App. No. C-950332.  
Stratton, J., not participating.

96-1731. Nationwide Mut. Fire Ins. Co. v. Chaffin.  
Franklin App. No. 95APE12-1636. Discretionary appeal, and discretionary cross-  
appeal of Nationwide Mutual Fire Insurance Company denied.

96-1737. Perkins v. Hamilton Cty. Dept. of Human Serv.  
Hamilton App. No. C-950687.

Stratton, J., not participating.

96-1740. Goodson v. Reese.

Allen App. No. 1-95-82.

Resnick and Pfeifer, JJ., dissent.

96-1741. State v. Van Scoder.

Medina App. No. 2510-M.

96-1747. Huff v. Morosko.

Muskingum App. No. CT950018.

96-1748. Jamaal v. Cleveland Fin. Admr.

Cuyahoga App. No. 70240.

96-1752. State v. Cameron.

Montgomery App. No. 15499.

Pfeifer, J., dissents.

96-1756. State v. Grinnell.

Franklin App. No. 95APA10-1314.

96-1760. Drolshagen v. Ohio Dept. of Adm. Serv.

Franklin App. No. 95APE11-1410.

96-1766. Goddard v. Children's Hosp. Med. Ctr.

Hamilton App. Nos. C-950278 and C-950295.

96-1770. Three Bills, Inc. v. Parma.

Cuyahoga App. No. 69235.

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

96-1772. State v. Goodenough.

Lake App. No. 95-L-202.

Pfeifer, J., dissents.

96-1773. Curtis v. Geneva Twp. Trustees.

Ashtabula App. No. 95-A-0019.

96-1774. State v. Gammon.

Hardin App. No. 6-96-6.

96-1778. Bedford Hts. v. Williams.

Cuyahoga App. No. 69670.

96-1782. State v. Starcher.

Wyandot App. No. 16963.

96-1785. State v. Koenig.

Allen App. No. 1-95-61.

96-1786. State v. Vroman.

Ross App. No. 95CA2138.

96-1789. State v. Dvorak.  
Cuyahoga App. No. 70681.

96-1972. State v. Stowers.  
Tuscarawas App. No. 94AP090066.  
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

96-2231. State v. Robbins.  
Licking App. No. 93CA30.

96-2234. State v. Lewis.  
Coshocton App. No. 90CA3.

96-2276. State v. Nelson.  
Montgomery App. No. 14775.

96-2305. State v. Canitia.  
Cuyahoga App. Nos. 62492 and 62639.

96-2366. State v. Wells.  
Gallia App. No. 93CA9.

96-2471. State v. Grinnell.  
Franklin App. No. 95APA10-1314.

#### MOTION DOCKET

95-64. State ex rel. Crandall, Phiels & Wisniewski v. DeCessna.  
In Procedendo and Prohibition. On motion for order to show cause and on motion to strike relators' motion to show cause. Sua sponte, alternative writ granted.  
Cook, J., dissents.  
Resnick, J., not participating.

95-1841. State ex rel. Kabert v. Shaker Hts. Bd. of Edn.  
In Mandamus. On request for oral argument, motion to refer calculation of back pay to master commissioner, and motion to consolidate case with 96-1787, State ex rel. Cohn v. Shaker Hts. Bd. of Edn., Cuyahoga App. No. 69539. Request and motions denied.  
Moyer, C.J., would grant the motion to refer and the motion to consolidate.

95-2377. Great N. Inns Co. v. Cuyahoga Cty. Bd. of Revision.  
Board of Tax Appeals, No. 94-A-883. On joint motion to remand. Motion granted.

96-740. Blue Cross & Blue Shield of Ohio v. Schmidt.  
Lucas App. No. L-94-291. On motion to strike. Motion denied.  
Pfeifer, J., dissents.  
Resnick, J., not participating.

96-876. Gallia Cty. Veterans Serv. Comm. v. Gallia Cty. Bd. of Commrs.  
Gallia App. No. 95CA13. On motion to strike amicus brief of Board of Commissioners of Franklin County by Gallia County Veterans Service Commission. Motion granted.  
Resnick and Pfeifer, JJ., dissent.

96-1185. State ex rel. Findlay Publishing Co. v. Schroeder.  
On application for attorney fees and costs. Relator granted \$5,000 in attorney fees and a refund of \$140 in costs (security deposit and docket fee). Relator's request for additional costs and expenses is denied.

Pfeifer, J., dissents.

96-1328. State ex rel. Grady v. State Emp. Relations Bd.  
Franklin App. No. 95APD11-1445. Pursuant to S.Ct.Prac.R. V(6), this court, sua sponte, orders the Court of Appeals for Franklin County to supplement the record with the motion for summary judgment (and any attachments thereto) of appellee, State Employment Relations Board, filed on or about December 12, 1995.

96-1213. State v. McGuire.  
Preble App. No. CA9501001. On motion to strike exhibits from the record and on motion to supplement record. Motion to strike denied and motion to supplement granted.

96-1272. Seagraves v. Seagraves.  
Montgomery App. No. 15588. On statement of fees pursuant to court order. Statement approved.

96-1375. State ex rel. Jones v. Garfield Hts. Mun. Court.  
Cuyahoga App. No. 70611. On request for oral argument. Request denied.

96-1376. State v. Dennis.  
Summit App. No. 17156. On motion to participate in oral argument and on motion for appointment of counsel. Motion to participate granted; sua sponte, motion remanded to court of appeals for appointment of counsel.

96-1697. Snavelly v. Erie Cty. Bd. of Revision.  
Board of Tax Appeals, No. 95-K-1242. On motion to strike. Motion denied.  
F.E. Sweeney, J., dissents.

96-1809. State ex rel. Buchman v. Wayne Trace Local School Dist. Bd. of Edn.  
In Mandamus. On answer of respondent and motion to dismiss, motion to strike affidavit opinion testimony, motion to amend complaint, motion for leave to file supplemental affidavit, motion for leave to file supplemental affidavit of relator's counsel with affidavit attached, and motion for leave to file second supplemental affidavit of relator's counsel with affidavit attached. Motions to dismiss denied; motion to strike denied; motion to amend complaint granted; motions for leave to supplement granted; and, sua sponte, alternative writ granted.

Stratton, J., not participating.

96-1871. State v. Stowers.  
Tuscarawas App. No. 94AP090066. 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' Judgment Entry filed August 1, 1996:

"This cause comes before us on appellant's motion to certify this case to the Ohio Supreme Court for review because it is in conflict with the decision of the Twelfth District Court of Appeals in State v. Givens (March 9, 1992), Warren App. #CA92-02-015, unreported, and State v. Yarber (March 27, 1995) Preble App. #CA94-08-019, unreported.

"We have reviewed the cases cited by appellant and we find our decision in the within is in conflict with those reached by the Twelfth District, supra.

"Accordingly, we certify the within to the Supreme Court on the following issue: 'Whether a trial court errs in permitting an expert witness to testify the behavior of an alleged child-victim of sexual abuse is consistent with the behavior of children who have been sexually abused, because this impermissibly conveys to the jury the expert's belief the child was actually abused.'

"IT IS SO ORDERED."

F.E. Sweeney, J., dissents.

96-1955. State v. Broadnax.

Hamilton App. Nos. C-940947 and C-940948. On motion for leave to file delayed appeal. Motion denied.

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

96-2143. State ex rel. Blue Cross & Blue Shield of Ohio v. Montgomery.

In Mandamus. On answer of respondent. Sua sponte, alternative writ granted; motion to expedite denied.

Douglas, J., would grant the motion to expedite.

96-2165. Mancino v. Tracy.

Board of Tax Appeals, No. 95-A-891. On motion to consolidate case with 96-2176, Mancino v. Tracy, Board of Tax Appeals, No. 95-A-981. Motion granted.

96-2275. State v. McCoy.

Tuscarawas App. No. 94AP090062. On motion for leave to file delayed appeal. Motion denied.

96-2330. State v. Estep.

Ross App. No. 94CA2072. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

96-2334. Winchell v. Burch.

Portage App. No. 95P0150. 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' Judgment Entry filed October 8, 1996:

"[W]e conclude that the judgment of the Second Appellate District [in Falls Homeowners' Assn., Inc. v. Aveyard (July 27, 1994), Montgomery App. No. 14250, unreported, 1994 WL 409626] is in conflict with this court's judgment in Winchell. Appellants' motion to certify the conflict is granted and we, hereby, certify the following rule of law to the Supreme Court of Ohio:

"The expansion of a condominium unit owner's limited common area deck or other structure onto common area land does not alter the percentage of interest in the common areas and facilities of each unit and therefore does not require an amendment to the declaration unanimously approved by all unit owners affected, pursuant to R.C. 5311.04(D). Such an expansion merely changes the appearance of that part of the common area without diminishing the amount of each unit's interest in the land, and thus, this change may be approved by the Board of Directors of the Association only."

F.E. Sweeney, J., dissents.

96-2346. State v. Getsy.

Trumbull C.P. No. 95CR399. On motion for appointment of counsel. Motion granted.

96-2362. State v. Smith.

Tuscarawas App. No. 96AP070057. On motion for leave to file delayed appeal. Motion denied.

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

96-2382. State v. Allen.

Miami App. No. 95CA70. On motion for leave to file delayed appeal. Motion granted.

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

96-2410. State v. Geneva.

Tuscarawas App. No. 95AP030011. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Douglas and Stratton, JJ., dissent.

96-2411. State v. Dillon.

Monroe App. No. 725. On motion for leave to file delayed appeal. Motion granted.

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

96-2415. State v. Allen.

Montgomery App. No. 15162. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Stratton, J., dissent.

96-2417. State v. Mack.

Franklin App. No. 94APA07-992. On motion for leave to file delayed appeal. Motion denied.

96-2440. State v. Ramos.

Ashtabula App. No. 96CA0008. On motion for leave to file delayed appeal. Motion granted.

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

96-2441. State v. Vicks.

Geauga App. No. 96-G-1995. On motion for leave to file delayed appeal. Motion denied.

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

96-2461. State v. Payne.

Cuyahoga App. No. 69858. On motion for leave to file delayed appeal. Motion denied.

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

96-2462. State v. Wells.

Stark App. No. 95CA374. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

96-2484. State v. Morgan.

Cuyahoga App. No. 70407. On motion for leave to file delayed appeal. Motion granted.

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

96-2487. State v. Bragg.

Cuyahoga App. No. 70461. On motion for leave to file delayed appeal. Motion denied.

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

96-2493. State v. Allen.

Darke App. No. 1390. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Cook and Stratton, JJ., dissent.

96-2516. United States Fid. & Guar. Co. v. Lightning Rod Mut. Ins. Co. Washington App. Nos. 95CA27 and 95CA29. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue of the exclusion of liability coverage for the operation of a vehicle to deliver pizzas under the facts of this case when the vehicle is "being used to carry persons or property for a fee." Colonial Ins. Co. of California v. Jermann (1995), 102 Ohio App.3d 384, 657 N.E.2d 336, is the conflicting case.

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

96-2661. State v. Fretz.

Summit App. No. 17999. On motion for stay of the court of appeals' judgment. Motion denied.

#### DISCRETIONARY APPEALS ALLOWED

96-1386. State v. Selvage.

Montgomery App. No. 15530.

Resnick, Pfeifer and Cook, JJ., dissent.

96-1467. Harris v. Kennedy.

Cuyahoga App. No. 69420.

Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1487. Whitman v. Whitman.

Hancock App. No. 5-95-47.

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

96-1549. State v. Meade.

Cuyahoga App. No. 69533.

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

96-1575. VFW Post 4615 v. Ohio Liquor Control Comm.

Miami App. No. 95CA41. Discretionary appeal allowed; sua sponte, cause held for decision in 96-1269, AL Post 763 v. Ohio Liquor Control Comm., Greene App. No. 95CA78.

Douglas, Resnick and Pfeifer, JJ., dissent.

96-1576. State v. Matthews.

Cuyahoga App. No. 70587.

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

96-1627. State v. Tucker.

Shelby App. No. 17-95-10.

Pfeifer, J., dissents.

96-1706. State v. Dubose.

Mahoning App. No. 95 C.A. 134.

Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

96-1777. Fidelholtz v. Peller.

Stark App. No. 1995CA00340.

Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1788. Ruckman v. Cubby Drilling, Inc.  
Portage App. No. 95-P-0115. Sua sponte, cause consolidated with 96-1790 and 96-1791, *infra*.

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

96-1790. Riggs v. Cubby Drilling, Inc.  
Portage App. No. 95-P-0075. Sua sponte, cause consolidated with 96-1788, *supra*, and 96-1791, *infra*.

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

96-1791. Brosius v. Cubby Drilling, Inc.  
Portage App. No. 95-P-0114. Sua sponte, cause consolidated with 96-1788 and 96-1790, *supra*.

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

96-1792. State v. Bertram.  
Hamilton App. Nos. C-960005 and C-960006.

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

96-2268. Winchell v. Burch.  
Portage App. No. 95-P-0150. Discretionary appeal allowed; sua sponte, cause consolidated with 96-2334, *supra*.

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

#### DISCRETIONARY APPEALS NOT ALLOWED

96-940. Elliott v. Indus. Comm.  
Franklin App. 95APE10-1283.  
Moyer, C.J., and Cook, J., dissent.  
Stratton, J., not participating.

96-946. In re Roberts.  
Franklin App. No. 95APF06-725.  
Stratton, J., dissents.

96-959. Benner v. Hammond.  
Ross App. No. 96CA2116.  
Moyer, C.J., and Stratton, J., dissent.

96-992. Superior's Brand Meats, Inc. v. Durant.  
Stark App. No. 95CA0335.  
Pfeifer, J., dissents.

96-1168. Monastra v. D'Amore.  
Cuyahoga App. No. 69378.

96-1176. Griley v. Griley.  
Fairfield App. No. 95CA42.

96-1216. State v. Foster.  
Hamilton App. No. C-950449.

96-1367. T.C. Spires, Inc. v. Ohio Bur. of Workers' Comp.  
Fairfield App. No. 95CA62.

96-1373. Midwestern College of Massotherapy v. State Med. Bd.



Franklin App. No. 95APE10-1348.  
Douglas, J., dissents.

96-1391. Taylor v. Bocker.  
Mahoning App. No. 94 C.A. 182.  
Stratton, J., dissents.

96-1415. Dicks v. U.S. Health Corp. of S. Ohio.  
Scioto App. No. 95CA2350.

96-1422. Kennison v. Progressive Ins. Co.  
Lake App. No. 95-L-080.  
Moyer, C.J., and Stratton, J., dissent.

96-1425. Wickline v. W. Res. Group Mut. Cas. Co.  
Franklin App. No. 95APE11-1498. (Appeal by Western Reserve Group Mutual  
Casualty Company, second appeal by Westfield National Insurance Company, and  
third appeal by State Farm Mutual Insurance Company.)  
Stratton, J., would allow the second appeal.  
Pfeifer, J., would allow all three appeals.

96-1430. Flauto v. Flauto.  
Mahoning App. No. 95 C.A. 97.  
Douglas and Stratton, JJ., dissent.

96-1448. Erickson v. Misny.  
Cuyahoga App. No. 69213.

96-1458. Morton v. Woodmark Homes, Inc.  
Delaware App. No. 95CAE03015.  
Douglas and Pfeifer, JJ., dissent.

96-1460. Renner v. Derin Acquisition Corp.  
Cuyahoga App. No. 69181. On appeal and on cross-appeal by Carol B. Renner.  
Appeal and cross-appeal denied.  
Moyer, C.J., Douglas and Cook, JJ., dissent.

96-1469. Perfection Graphics, Inc. v. Sheehan.  
Geauga App. No. 95-G-1915.  
Moyer, C.J., dissents.

96-1483. Phillips v. Dayton Power & Light Co.  
Miami App. No. 95CA57.  
Douglas and Cook, JJ., dissent.

96-1496. Am. Justice Ins. Reciprocal v. Westfield Ins. Co.  
Montgomery App. No. 15611.  
Stratton, J., dissents.

96-1500. Tremaine v. Tremaine.  
Montgomery App. Nos. 14579 and 15589.  
Douglas, J., dissents.

96-1512. Tieman v. Royal Athletics.  
Clermont App. No. CA96-01-001.

96-1517. Brooks v. Ohio State Univ.  
Franklin App. No. 95API11-1407.  
Douglas and Pfeifer, JJ., dissent.

96-1530. Coder v. Coder.  
Montgomery App. No. 15566.  
Moyer, C.J., and Resnick, J., dissent.

96-1540. Muczyk v. Cleveland State Univ.  
Cuyahoga App. No. 69207.  
Resnick and F.E. Sweeney, JJ., dissent.

96-1543. Morell v. St. Elizabeth Hosp.  
Mahoning App. No. 95 C.A. 1.

96-1546. Am. Express Travel Related Serv. Co. v. Mandilakis.  
Cuyahoga App. No. 68783.  
Stratton, J., dissents.

96-1548. Selby v. Wayne Mut. Ins. Co.  
Fairfield App. No. 95CA46.  
Moyer, C.J., and Stratton, J., dissent.

96-1554. Brown v. Guarantee Title & Trust/ARTA.  
Fairfield App. No. 94-41.

96-1564. Porter v. Columbus Bd. of Indus. Relations.  
Franklin App. No. 95APE12-1618.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1582. Barnett v. Connecticut Mut. Life Ins. Co.  
Cuyahoga App. No. 69253.

96-1586. Dalessio v. Williams.  
Summit App. No. 17508.  
Moyer, C.J., dissents.

96-1593. State v. Blankenship.  
Summit App. No. 17425.

96-1626. Panzica Constr. Co. v. Ohio Cas. Ins. Co.  
Cuyahoga App. No. 69444.  
Moyer, C.J., dissents.

96-1632. French v. SYSCO Food Serv. of Cleveland.  
Cuyahoga App. No. 69688.  
Stratton, J., dissents.

96-1637. Parker v. Dayton Metro. Hous. Auth.  
Montgomery App. No. 15556.

96-1641. Mettler-Toledo, Inc. v. Republic Powdered Metals, Inc.  
Medina App. No. 2500-M.  
Pfeifer, J., dissents.

96-1653. In re Mathess Children.

Stark App. No. 95CA0032.

Resnick, J., dissents.

96-1655. C.W. Zumbiel Co. v. Reichhold Chem., Inc., Emulsion Polymers Div.

Hamilton App. No. C-950644.

Moyer, C.J., dissents.

96-1658. State v. Lester.

Cuyahoga App. No. 69243.

96-1661. State v. Mahaffey.

Warren App. No. CA96-02-017.

96-1666. State v. Bumgardner.

Greene App. No. 95CA11.

Moyer, C.J., and Stratton, J., dissent.

96-1667. Jacob v. Grant Life Choices Fitness Ctr.

Franklin App. No. 95APE12-1633.

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

96-1691. Morris v. State.

Butler App. No. CA95-11-208.

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

96-1707. In re Stone.

Franklin App. No. 96APE01-51.

96-1710. Hinkle, Cox, Eaton, Coffield & Hensley v. Cadle Co.

Trumbull App. No. 95-T-5336.

96-1716. Payne v. Cartee.

Ross App. No. 95CA2135.

Stratton, J., dissents.

96-1735. Beach v. Poole.

Muskingum App. No. CT950029.

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

96-1736. Kalaitsides v. Greene.

Summit App. No. 17196.

Douglas, Resnick and Pfeifer, JJ., dissent.

96-1742. State v. Violi.

Trumbull App. Nos. 94-T-5053 and 94-T-5059.

96-1750. Philips-Alfera v. Nationwide Ins. Co.

Summit App. No. 17556.

Pfeifer and Stratton, JJ., dissent.

96-1751. State v. Goines.

Cuyahoga App. No. 69534.

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

96-1759. Ferguson v. Neaman.

Hamilton App. No. C-950414.

96-1764. Durrett v. Delaware Cty. Bd. of Elections.  
Delaware App. No. 95CAE10066.

96-1768. Cuyahoga Falls v. Gen. Mills Restaurants, Inc.  
Summit App. No. 17195.

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

96-1779. Slone v. Aerospace Design & Fabrication, Inc.  
Cuyahoga App. No. 69446. (Appeal by Alphacor, Inc. and Susan Lanza, Exr.;  
second appeal by Maxine G. Slone.) Appeals denied.

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

96-1780. State v. Alston.

Lake App. No. 94-L-096.

Moyer, C.J., dissents.

96-2146. United States Fid. & Guar. Co. v. Lightning Rod Mut. Ins. Co.  
Washington App. Nos. 95CA27 and 95CA29.

Moyer, C.J., would allow Proposition of Law No. I only.

Pfeifer and Stratton, JJ., would allow the discretionary appeal.

#### RECONSIDERATION DOCKET

95-2337. State v. Montecalvo.

Lorain App. No. 95CA006041. Reported at 77 Ohio St.3d 96, \_\_ N.E.2d \_\_. On  
motion for reconsideration. Motion denied.

Cook, J., not participating.

95-2444. Cleveland Elec. Illum. Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 95-458-EL-UNC. Reported at 76 Ohio St.3d 521,  
\_\_ N.E.2d \_\_. On motion for reconsideration of Ohio Power Company and on motion  
for reconsideration of Medical Center Company.

The motions fail for want of four votes on the following vote:

Moyer, C.J., Cook and Stratton, JJ., would grant the motions in part.

Douglas, Resnick and Pfeifer, JJ., would deny the motions.

F.E. Sweeney, J., not participating.

96-745. Stover v. Wallace.

Franklin App. No. 95APE06-743. Reported at 77 Ohio St.3d 1419, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion denied.

Stratton, J., not participating.

96-784. State ex rel. A & D Limited Partnership v. Keefe.

Hamilton App. No. C-960056. Reported at 77 Ohio St.3d 50, \_\_ N.E.2d \_\_. On  
motion for reconsideration. Motion denied.

96-991. In re Estate of Davis.

Montgomery App. No. 15658. Reported at 77 Ohio St.3d 45, \_\_ N.E.2d \_\_. On  
motion for reconsideration. Motion denied.

96-1206. Blatnick v. Sheller-Globe Corp.

Cuyahoga App. No. 69026. Reported at 77 Ohio St.3d 1422, \_\_ N.E.2d \_\_. On  
motion for reconsideration. Motion denied.

Moyer, C.J., and Stratton, J., dissent.

96-1235. Costakos v. Frick.  
Franklin App. No. 95APE07-837. Reported at 77 Ohio St.3d 1419, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion denied.  
Stratton, J., not participating.

96-1287. Barnes v. State.  
Franklin App. No. 95API09-1153. Reported at 77 Ohio St.3d 1420, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion denied.

96-1302. Council of Smaller Enterprises v. Gates, McDonald & Co.  
Cuyahoga App. Nos. 68510 and 69868. Reported at 77 Ohio St.3d 1423, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion granted and discretionary appeal allowed.  
Pfeifer, Cook and Stratton, JJ., dissent.

96-1318. Davis v. Brown.  
Franklin App. No. 95APE11-1478. Reported at 77 Ohio St.3d 1420, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion denied.

96-1383. State v. Blankenship.  
Butler App. No. CA96-04-087. Reported at 77 Ohio St.3d 1445, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

96-1434. Ambrosia Coal & Constr. Co. v. C.B.G., Inc.  
Mahoning App. No. 94 C.A. 199. Reported at 77 Ohio St.3d 1448, \_\_ N.E.2d \_\_.  
On motion for reconsideration. Motion denied.

96-1451. Howard v. Howard.  
Lucas App. No. L-96-050. Reported at 77 Ohio St.3d 1445, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

96-1832. Uncrop v. Natl. Inst. of Health.  
Cuyahoga App. No. 70341. Reported at 77 Ohio St.3d 1418, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

96-2049. State v. Smith.  
Summit App. No. 16910. Reported at 77 Ohio St.3d 1424, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

96-2093. State ex rel. Lesser v. Thompson.  
In Procedendo. Reported at 77 Ohio St.3d 1442, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

96-2220. State ex rel. DPR Properties, Inc. v. Butler Cty. Bd. of Elections.  
Reported at 77 Ohio St.3d 1450, \_\_ N.E.2d \_\_. On second motion for reconsideration. Motion denied.  
Moyer, C.J., and Douglas, J., dissent.

96-2336. State ex rel. Jackson v. Ohio Adult Parole Auth.  
In Habeas Corpus. Reported at 77 Ohio St.3d 1443, \_\_ N.E.2d \_\_. On motion for reconsideration. Motion denied.

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