

12/10/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

December 10, 1997

MERIT DOCKET

97-2028. State ex rel. Landgraf v. Pepple.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

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

97-2030. State ex rel. Rosile v. Skelley.
In Quo Warranto. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

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

Pfeifer, J., dissents and would grant an alternative writ.

97-2037. State ex rel. Hall v. Ross Correctional Inst.
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 Lundberg Stratton, JJ., concur.

97-2095. State ex rel. Forsyth v. Brigner.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

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

97-2097. Hattie v. Ohio Adult Parole Auth.
In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2108. State ex rel. Smith v. Wingard.
In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

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

97-2110. State ex rel. Bessick v. Richland Cty. Court of Appeals.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-2136. State ex rel. Johnson v. Warren.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-2177. In re Malone.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2179. State ex rel. Sauer v. Knece.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-2202. Collier v. Money.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2218. In re Petition for a Writ of Habeas Corpus for Bates.

In Habeas Corpus. Sua sponte, cause dismissed.

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

97-2270. Brown v. Mitchell.

In Habeas Corpus. Sua sponte, cause dismissed.

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

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

97-1159. State v. Dye.

Richland App. No. 95CA80.

97-1681. Lane v. Cincinnati Civ. Serv. Comm.

Hamilton App. No. C-960698. (Appeal of city of Cincinnati et al. and cross-appeal of Thomas Lane et al.)

Resnick and Lundberg Stratton, JJ., dissent.

97-1704. State v. Palmer.

Trumbull App. No. 95-T-5180.

Moyer, C.J., and Douglas, J., dissent and would allow on Proposition of Law No. I.

97-1792. State v. Loesser.

Cuyahoga App. No. 71480.
Pfeifer, J., dissents.

97-1802. State v. Scott.
Lucas App. No. L-88-323.
Resnick, J., not participating.

97-1842. Lieux v. Cuttiford.
Lorain App. No. 96CA006416.

97-1850. H.P.J. Ltd. v. Naticcia.
Cuyahoga App. No. 71455.

97-1855. State v. Engle.
Greene App. No. 96CA153.

97-1859. State v. Landoll.
Ashland App. No. 97COA01212.
Pfeifer, J., dissents.

97-1863. State v. Oviedo.
Lucas App. No. L-95-287.
Resnick, J., not participating.

97-1883. State v. Hegwood.
Cuyahoga App. No. 70650.

97-1884. Bird v. Corell.
Medina App. No. 2609-M.

97-1885. State v. Amburgy.
Warren App. No. CA96-12-133.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1887. State v. Tenace.
Lucas App. No. L-95-010.
Lundberg Stratton, J., dissents.
97-1888. Council of the Village of Cairo v. Miller.
Allen App. No. 1-97-12.
Lundberg Stratton, J., would allow on Proposition of Law
No. II only.
Pfeifer, J., would allow.

97-1891. State v. DeHeart.
Delaware App. No. 96CAA11064.

97-1902. State v. Fisher.
Sandusky App. No. S-97-009.
Resnick, J., not participating.

97-1903. State v. Nicholson.
Cuyahoga App. No. 71398.

97-1911. State v. Ford.
Hamilton App. No. C-960690.

97-1916. Simon v. Ohio Bur. of Emp. Serv.

Hamilton App. No. C-960984.

97-1917. FOE Aerie 2293 v. Ohio Liquor Control Comm.
Brown App. No. CA97-01-004. Discretionary appeal denied and
motion to consolidate with 96-1269, AL Post 763 v. Ohio Liquor
Control Comm., Greene App. No. 95CA78, et al., denied.
Moyer, C.J., and Resnick, J., dissent.

97-1922. Williams v. S. Ohio Correctional Facility.
Franklin App. No. 96API12-1642.

97-1926. State v. Houston.
Cuyahoga App. No. 72383.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1930. State v. Valentine.
Cuyahoga App. No. 71301.
Moyer, C.J., dissents.

97-1931. State v. Boyd.
Cuyahoga App. No. 71387.

97-1932. State v. Kobi.
Fulton App. No. F-96-025.
Resnick, J., not participating.

97-1933. State v. Hamilton.
Montgomery App. No. 16124.
F.E. Sweeney, J., dissents.

97-1935. Weyandt v. Davis.
Summit App. No. 18412.

97-1939. State v. Price.
Franklin App. No. 96APA12-1718.
Lundberg Stratton, J., dissents.

97-1942. State v. Williams.
Hamilton App. No. C-960822.

97-1944. State v. Heddleson.
Stark App. No. 1997CA00113.

97-1949. State v. Wallen.
Clermont App. No. CA97-02-017.

97-1952. Becker v. Becker.
Clermont App. No. CA97-01-001.

97-1953. State v. Griffith.
Warren App. No. CA97-02-018.

97-1957. State v. Howard.
Scioto App. No. 96CA2470.

97-1959. Ogier v. Stewart Bros., Inc.
Franklin App. Nos. 96APE12-1732 and 96APE12-1733.

97-1961. State v. Robertson.
Knox App. No. 97CA04.

97-1963. State v. Crawford.
Montgomery App. No. 16620.
Moyer, C.J., dissents.

97-1964. Cleveland v. Dawson.
Cuyahoga App. No. 71450.

97-1975. Butera v. Cordle.
Franklin App. No. 96APE12-1748.
Moyer, C.J., dissents.

97-1981. Askenazi v. Gen. Elec. Co.
Montgomery App. Nos. 16085, 16303 and 16307. (Appeal of Joseph
Askenazi, M.D., et al. and appeal of General Electric Company.)
Pfeifer, J., dissents.
Moyer, C.J., and Resnick, J., not participating.

97-1983. Williams v. Anderson.
Richland App. No. 97CA182.

97-1984. State v. Naugle.
Auglaize App. No. 2-97-9.

97-1987. State v. Vega.
Cuyahoga App. No. 70600.

97-1989. State v. Woods.
Cuyahoga App. No. 72815.

97-1993. State v. Hagwood.
Cuyahoga App. No. 72858.

97-1996. Ohio Farmers Ins. Co. v. Perry.
Ashtabula App. No. 96-A-0065.
Resnick, J., not participating.

97-1999. State v. Caston.
Erie App. No. E-95-035.
Lundberg Stratton, J., dissents.
Resnick, J., not participating.

97-2007. State v. Prude.
Cuyahoga App. No. 71577.

97-2012. Nichols v. METS Paramedic Serv., Inc.
Tuscarawas App. No. 96AP110091.
Moyer, C.J., dissents.

97-2013. Columbus v. Crouch.
Franklin App. No. 97APC01-75.

97-2018. State v. Harris.
Cuyahoga App. No. 71489.
Pfeifer, J., dissents.

97-2050. State v. Perry.
Trumbull App. No. 94-T-5165.

97-2058. Mankowski v. Denny's, Inc.
Lucas App. No. L-97-1067.
Douglas, J., dissents.
Resnick, J., not participating.

97-2071. Stefanov v. Grange Mut. Cas. Co.
Cuyahoga App. No. 71209.
Moyer, C.J., dissents and would allow on Propositions of
Law Nos. I and II.
Douglas and Resnick, JJ., dissent and would allow.

97-2092. State v. Fields.
Cuyahoga App. No. 68906.

97-2119. Palmer v. David R. Pheils, Jr. & Assoc.
Wood App. No. WD-96-001.
Resnick, J., dissents.

97-2130. State v. Allen.
Lorain App. No. 96CA006581.
Pfeifer, J., dissents.
Douglas, J., not participating.

MOTION DOCKET

97-402 and 97-551. Ross v. Farmers Ins. Group of Cos.
Montgomery App. No. 15865. On motion to consolidate with 97-
2056, infra. Motion granted.

97-1142. Sutowski v. Eli Lilly & Co.
Certified State Law Question, No. 1-97-CV-1283. On motion for
admission pro hac vice of Kenneth A. Cohen, motion for admission
pro hac vice of James J. Dillon, motion for admission pro hac
vice of James M. Beck, and motion for admission pro hac vice of
Eric D. Statman. Motions granted.

Resnick, J., not participating.

On request for oral argument of Eli Lilly & Company,
request for oral argument of June Sutowski, and request for oral
argument of Pharmacia and Upjohn Company. Requests granted.

Resnick, J., not participating.

On motion for admission pro hac vice of Anderson, Kill &
Olick, P.C. Motion denied.

Resnick, J., not participating.

97-1231. State ex rel. Tubbs Jones v. Suster.
In Prohibition. On motion to withdraw motion to strike
relator's submission of evidence. Motion granted.

On motion to strike relator's submission of evidence.
Motion denied as moot.

97-1920. Gen. Dynamics Land Sys., Inc. v. Tracy.
Board of Tax Appeals, Nos. 95-A-443 and 95-A-444. On motion for
admission pro hac vice of D. Joe Smith and Paul W. Cobb, Jr.
Motion granted.

97-1960. State ex rel. Cuyahoga Cty. v. State Personnel Bd. of Review.
Franklin App. No. 97APD04-467. On motion for issuance of peremptory writ of prohibition. Motion denied.

97-2046. State v. Palmer.
Trumbull App. No. 95-T-5180. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issues stated at pages 2-3 of the court of appeals' Judgment Entry filed September 8, 1997:

"(1) Whether the time period within which an accused must be brought to trial is tolled from the date that a motion to determine the accused's competency to stand trial is filed or on the date on which a competency examination is ordered by the trial court.

"(2) Whether the speedy trial statutory time may continue to be tolled when the examiner's report is not filed within the thirty-day time period specified in R.C. 2945.371(D)."

The conflict cases are State v. Bowman (1987), 41 Ohio App.3d 318, 535 N.E.2d 730, and State v. Wilson (1982), 7 Ohio App.3d 219, 7 OBR 281, 454 N.E.2d 1348.

F.E. Sweeney, J., dissents.

97-2054. State v. Ruple.
Summit App. No. 15726. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

97-2107. State v. Stepp.
Ross App. No. 96CA2205. On motion to strike motion for delayed appeal. Motion denied.

On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

97-2127. Poe v. Trumbull Cty.
Certified State Law Question, No. 4:97CV0180. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer only the question certified by the United States District Court for the Northern District of Ohio, Eastern Division, found at page 7 of the court's Certification Order filed October 14, 1997:

"Where the plaintiff demonstrates that a prior conviction was expunged by the Common Pleas Court that had entered the conviction, and following notice of the expungement to the office of the county prosecuting attorney the fact of the prior conviction is revealed to the plaintiff's employer by an employee of the county prosecuting attorney's office in the same county in which the expungement had been ordered, does this plaintiff have standing to sue and obtain judgment for compensatory damages against the county under O.R.C. 2953.32 and 2953.35?"

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

97-2138. State v. Bridges.
Marion App. No. 9-97-41. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

97-2139. State v. Hutchins.

Clark App. No. 3082. On motion for leave to file delayed appeal. Motion denied.

97-2141. Caldwell v. Greek Corp.

Lucas App. No. L-96-397. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Decision and Judgment Entry filed October 8, 1997:

"[W]hether destruction or failure to produce at trial the alleged injury, causing instrumentality allows the application for the rule of res ipsa loquitur, even where there is a finding that the defendant is not in exclusive control of said instrumentality."

The conflict case is Cook v. Wineberry Deli, Inc. (July 17, 1991), Summit App. No. 14841, unreported, 1991 WL 131485.

Moyer, C.J., dissents.

Resnick, J., not participating.

97-2156. State v. Everett.

Tuscarawas App. No. 96AP040039. On motion for leave to file delayed appeal. Motion granted.

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

97-2165. State v. Boynton.

Cuyahoga App. No. 71097. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

97-2225. Stefanov v. Grange Mut. Cas. Co.

Cuyahoga App. No. 71209. 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' Journal Entry filed October 14, 1997:

"Whether an amendment to the Ohio Uninsured Motorist Act, R.C. 3937.18, is applicable to an existing motor vehicle liability policy on the effective date of the amended statute or on the date the subject policy of insurance is renewed."

The conflict case is Monroe v. Consolidated Biomedical Lab (July 29, 1988), Portage App. No. 1830, unreported, 1988 WL 81311.

Cook, J., would also hold this cause for the decision in 97-1516, Balatgek v. State Farm Ins. Co., Franklin App. No. 96APE12-1619.

F.E. Sweeney, J., dissents.

97-2283. State v. Evans.

Hamilton App. No. C-950923. On motion for leave to file delayed appeal. Motion granted.

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

97-2286. State v. Jones.

Franklin App. No. 96APA11-1601. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

97-2294. RMI Titanium Co. v. Occidental Chem. Corp.
Cuyahoga App. Nos. 71471, 71486 and 71487. On motion to seal.
Motion granted.

Resnick and Pfeifer, JJ., dissent.

97-2301. Davis v. Farmers Ins. Group of Cos.
Montgomery App. No. 16378. On review of order certifying a
conflict. The court determines that a conflict exists; the
parties are to brief the issue stated at page 2 of the court of
appeals' Decision and Entry filed October 27, 1997:

"When does a cause of action for underinsured motorist
coverage accrue so as to determine the law applicable to such a
claim?"

The conflict cases are Brocwell v. King (Oct. 24, 1995),
Richland App. No. 95-25, unreported, 1995 WL 768520, and
Heritage Mut. Ins. Co. v. McBee (Aug. 21, 1996), Summit App. No.
17440, unreported, 1996 WL 470652.

97-2479. In re Adoption of Doe.
Summit App. No. 18313. On motion for stay. Motion denied.

DISCRETIONARY APPEALS ALLOWED

97-1985. State v. Cook.
Allen App. No. 1-97-21.
Pfeifer, J., dissents.

97-1998. Fred Siegel Co., L.P.A. v. Arter & Hadden.
Cuyahoga App. No. 71440.
Douglas and Cook, JJ., dissent.

97-2005. R.J. Weiss Dev. Co. v. Bd. of Zoning Appeals.
Cuyahoga App. No. 70965.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-2008. State v. Middlebrooks.
Montgomery App. No. 15671.
Resnick and Cook, JJ., dissent.

97-2056. Davis v. Farmers Ins. Group of Cos.
Montgomery App. No. 16378. The discretionary appeal is allowed.
Pfeifer, J., dissents.

On motion to consolidate with 97-402, Ross v. Farmers Ins.
Group of Cos., Montgomery App. No. 15865. Motion granted and
briefing ordered.

F.E. Sweeney, J., would deny the motion to consolidate.

DISCRETIONARY APPEALS NOT ALLOWED

97-352. State v. Hymes.
Mahoning App. No. 93 C.A. 182.

97-1897. Adam v. Bath Twp. Bd. of Zoning Appeals.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1912. Stickovich v. Cleveland.
Cuyahoga App. No. 72874.

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

97-1913. DeHoff Agency, Inc. v. First Natl. Supermarkets, Inc.
Stark App. No. 96CA0392.

97-1914. Burns v. Lawson Co.
Summit App. No. 18101.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1921. State v. Dawson.
Summit App. No. 18216.

97-1923. Kenwood Plaza L.P. v. Stephens.
Hamilton App. No. C-961106.
Pfeifer, J., dissents.

97-1936. In re Estate of Evans.
Fulton App. No. F-96-040.
Resnick, J., dissents.

97-1937. Whyte v. Canada Steamship Lines, Inc.
Cuyahoga App. No. 71414.

97-1938. Leeth v. Fairborn USA, Inc.
Wyandot App. No. 16-97-01.
Resnick, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-1956. Sullinger v. Moyer.
Mahoning App. No. 96 C.A. 152.

97-1965. Micro Experts, Inc. v. Edison Technologies, Inc.
Cuyahoga App. No. 71822.
Pfeifer, J., dissents.

97-1966. In re Shank.
Marion App. No. 9-97-29.

97-1976. Stevens v. Finley.
Montgomery App. No. 16558.
Pfeifer, J., dissents.

97-1988. Clinch Scales v. Erie Cty. Sheriff's Dept.
Erie App. No. E-96-090.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1995. Campbell v. Velotta Constr. Co.
Warren App. No. CA97-03-021.
Resnick, J., not participating.

97-2019. Laderer v. St. Rita's Med. Ctr.
Allen App. No. 1-97-23.
F.E. Sweeney, J., dissents.

97-2115. David R. Pheils, Jr., & Assoc. v. Palmer.
Lucas App. No. L-96-176.
Resnick and F.E. Sweeney, JJ., dissent.

RECONSIDERATION DOCKET

96-677. State v. Smith.
Butler C.P. No. CR95050471. Reported at 80 Ohio St.3d 89, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

96-678. State v. Smith.
Butler App. No. CA96-02-024. Reported at 80 Ohio St.3d 89, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

96-2006 and 96-2025. Minton v. Honda of Am. Mfg., Inc.
Montgomery App. No. 14949. Reported at 80 Ohio St.3d 62, ____
N.E.2d _____. On motion for reconsideration and on motion for
stay of court's decision on motion for reconsideration. Motions
denied.

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

96-2409. State ex rel. Johnson v. Ohio Parole Bd.
Franklin App. No. 95APD12-1608. Reported at 80 Ohio St.3d 140,
____ N.E.2d _____. On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

97-187. State ex rel. Strothers v. Wertheim.
Cuyahoga App. No. 71185. Reported at 80 Ohio St.3d 155, ____
N.E.2d _____. On motion for reconsideration. Motion denied.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-763. State ex rel. Russo v. Deters.
Hamilton App. No. C-961098. Reported at 80 Ohio St.3d 152, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

97-1506. In re Special Grand Jury Investigation Concerning
Organic Technologies, Inc.
Licking App. No. 96CA155. Reported at 80 Ohio St.3d 1426, ____
N.E.2d _____. On motion for reconsideration. Motion granted and
discretionary appeal allowed.
Resnick, F.E. Sweeney and Cook, JJ., dissent.

97-1518. Clough v. Wilson.
Coshocton App. No. 96CA27. Reported at 80 Ohio St.3d 1423, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

97-1532. Harris, McClellan, Binau & Cox v. Elkins.
Franklin App. No. 96APE12-1634. Reported at 80 Ohio St.3d 1423,
____ N.E.2d _____. On motion for reconsideration. Motion denied.

97-1555. State v. Girts.
Cuyahoga App. Nos. 69570 and 69762. Reported at 80 Ohio St.3d
1424, ____ N.E.2d _____. On motion for reconsideration. Motion
denied.

97-1559. ABM Farms, Inc. v. Woods.
Fairfield App. Nos. 95CA074, 96CA20 and 96CA7. Reported at 80
Ohio St.3d 1426, ____ N.E.2d _____. On motion for reconsideration.
Motion denied.

97-1577. Gomez v. Case Farms of Ohio, Inc.

Holmes App. No. 96CA562. Reported at 80 Ohio St.3d 1427, ____
N.E.2d _____. On motion for reconsideration. Motion denied.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1641. State v. Dever.
Hamilton App. No. C-960596. Reported at 80 Ohio St.3d 1425, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

97-1695. State v. Stevens.
Summit App. No. 16582. Reported at 80 Ohio St.3d 1425, ____
N.E.2d _____. On motion for reconsideration. Motion denied.