

10/21/98

## SUPREME COURT OF OHIO

## COLUMBUS

## ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

October 21, 1998

## MERIT DOCKET

98-1695. State v. Ratliff.

Clermont App. No. CA98-01-002. On review of order certifying a conflict. The court determines that no conflict exists. This cause is therefore dismissed.

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

98-1719. State v. Hatfield.

Clermont App. No. CA98-01-005. On review of order certifying a conflict. This court determines that no conflict exists. This cause is therefore dismissed.

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

98-1955. Floyd v. Haskins.

In Habeas Corpus. On petition for writ of habeas corpus and request for immediate release pending disposition. Sua sponte, cause dismissed.

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

Lundberg Stratton, J., would grant the return and deny the request for immediate release.

98-1997. Wolfe v. Haskins.

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

98-1143. State v. Cornwell.

Trumbull App. No. 95-T-5379.

98-1363. Reese v. Price.

Erie App. No. E-97-086.

Resnick, J., not participating.

98-1438. State v. Fairchilds.

Miami App. No. 97CA45.

Pfeifer, J., dissents.

98-1445. State v. Patterson.

Muskingum App. No. CT970035.

98-1458. Westfield Ins. Co. v. Huls America, Inc.

Franklin App. No. 97APE09-1208. (Appeal of UAP Columbus, J.V. 326132, et al. and appeal of Westfield Insurance Company et al.)

Pfeifer, J., dissents.

98-1466. State v. Buhrman.

Montgomery App. No. 16789.

98-1467. State v. Constant.

Lake App. No. 97-L-097.

Lundberg Stratton, J., dissents.

98-1470. Complete Auto Auction v. Automotive Fin. Corp.

Summit App. No. 18450.

98-1490. State v. Morgan.

Shelby App. No. 17-97-22.

98-1495. Abood v. Nemer.

Summit App. No. 18537.

Douglas, J., dissents.

98-1497. State v. Thomas.

Cuyahoga App. Nos. 74000 and 74001.

98-1509. Riffe v. Ohio Real Estate Appraiser Bd.

Summit App. No. 18734.

98-1514. State v. Parker.

Cuyahoga App. No. 71260.

98-1530. State v. Franklin.

Stark App. No. 1997CA00334.

98-1537. State v. Garner.

Franklin App. No. 97APA07-878.

98-1538. State v. Evans.

Franklin App. No. 97APC12-1620.

98-1542. State v. Proctor.

Cuyahoga App. No. 74405.

98-1543. State v. Braxton.

Lucas App. No. L-98-1032.

Resnick, J., not participating.

98-1544. State v. Hill.  
Hamilton App. No. C-970650.  
Cook, J., dissents.

98-1547. State v. Martinsons.  
Medina App. Nos. 2708-M and 2742-M. (Appeal of Alexander  
Martinsons and cross-appeal of state of Ohio.)  
Moyer, C.J., dissents.

98-1550. State v. McGee.  
Logan App. No. 8-98-01.  
Resnick, J., dissents.

98-1556. State v. Simone.  
Montgomery App. No. 16779.

98-1557. Cincinnati Ins. Co. v. Grogan.  
Hardin App. No. 6-98-06.

98-1562. Geraci v. Conte.  
Cuyahoga App. No. 72440.

98-1564. Bay Village v. Pshock.  
Cuyahoga App. No. 72931.  
F.E. Sweeney and Cook, JJ., dissent.

98-1566. State v. Winslow.  
Hamilton App. No. C-970464.

98-1567. State v. Lemons.  
Cuyahoga App. No. 71644.

98-1570. State v. Avery.  
Union App. No. 14-97-28.

98-1572. State v. Scott.  
Washington App. No. 97CA15.

98-1573. State v. Overman.  
Hamilton App. No. C-970663.

98-1577. State v. Gillard.  
Stark App. Nos. 1997CA00318 and 1997CA00410.  
Lundberg Stratton, J., would allow on Proposition of Law  
No. IX only.  
Pfeifer, J., would allow.

98-1581. State v. Baldrige.  
Holmes App. No. 1997CA00577.  
Pfeifer, J., dissents.

98-1588. Karlen v. Salem Blanking Corp.  
Columbiana App. No. 96CO63.  
Douglas and Pfeifer, JJ., dissent.  
Cook, J., not participating.

98-1590. State v. Frett.  
Cuyahoga App. No. 72812.

98-1591. State v. Anthony.  
Lake App. No. 98-L-035.

98-1592. Tri-County Concrete Co. v. N. Royalton Planning Comm.  
Cuyahoga App. No. 72781.  
Douglas, J., dissents.

98-1594. Rose v. Ohio Dept. of Human Serv.  
Warren App. No. CA97-10-103.

98-1597. State v. Demiduk.  
Columbiana App. No. 96CO16.

98-1600. Parker v. Ohio State Racing Comm.  
Lorain App. No. 97CA006830.

98-1785. State v. McDougall.  
Cuyahoga App. No. 71276.

#### MOTION DOCKET

96-1421. State ex rel. Ooten v. Siegel Interior Specialist Co.  
Franklin App. No. 95APD05-607. On request for oral argument.  
Request denied.

96-1715. State ex rel. Thompson v. Ohio Edison Co.  
Franklin App. No. 95APD10-1360. On request for oral argument.  
Request denied.  
Cook, J., not participating.

96-1991. State ex rel. World Stamping & Mfg. Co. v. Indus.  
Comm.  
In Mandamus. On request for oral argument. Request denied.

97-740. Tongren v. Pub. Util. Comm.  
Public Utilities Commission, No. 96-991-GA-UNC. On motion for  
leave to intervene of East Ohio Gas Company, motion to  
consolidate for oral argument with 97-1294, infra, and motion to  
extend time for oral argument. Motions granted and each side  
shall have twenty minutes.

Douglas, J., would grant the motion for leave to intervene  
but deny the motions to consolidate and to extend time.  
Cook, J., not participating.

97-1294. Tongren v. Pub. Util. Comm.  
Public Utilities Commission, No. 96-219-GA-GCR. On motion for  
leave to intervene of East Ohio Gas Company, motion to  
consolidate for oral argument with 97-740, supra, and motion to  
extend time for oral argument. Motions granted and each side  
shall have twenty minutes.

Douglas, J., would grant the motion for leave to intervene  
but deny the motions to consolidate and to extend time.  
Cook, J., not participating.

98-1442. State v. Sova.  
Cuyahoga App. Nos. 71923 and 71924. On motion for leave to file  
delayed appeal. Motion granted.  
F.E. Sweeney, J., dissents.

98-1480. State v. Harris.  
Montgomery App. No. 14343. On motion for leave to file delayed  
appeal. Motion denied.

98-1852. State v. Nivens.  
Franklin App. No. 95APA09-1236. On motion for leave to file  
delayed appeal. Motion denied.

98-1925. State v. Wharf.  
Warren App. No. CA97-08-087. On review of order certifying a  
conflict. The court determines that a conflict exists; the  
parties are to brief the issue stated at pages 1-2 of the court  
of appeals' Entry Granting Motion to Certify filed August 19,  
1998:

The above cause is before the court pursuant to a motion to  
certify conflict filed by counsel for appellant, Stephen M.  
Wharf, on June 17, 1998. The motion contends that this court's  
decision in the above case conflicts with the decisions of four  
appellate districts, i.e., State v. Anthony (Sept. 30, 1994),  
Lake App. No. 93-L-096, unreported [1994 WL 587882]; State v.  
Gulley (June 17, 1992), Summit App. No. 15137, unreported [1992  
WL 140006]; State v. Steel (Oct. 21, 1997), Defiance App. No. 4-  
96-29, unreported [1997 WL 661108]; and State v. Westbrook  
(Sept. 23, 1992), Licking App. No. 92-CA-2, unreported [1992 WL  
307874].

Upon due consideration of the foregoing, the court finds  
that its decision is in conflict with the above four cases and  
that the motion to certify should be GRANTED. The issue for  
certification is whether R.C. 2901.21(B) requires the particular  
robbery element, codified in R.C. 2911.02(A)(1), "[h]ave a  
deadly weapon on or about the offender's person or under the  
offender's control," to be committed with the mens rea of  
recklessness.

#### DISCRETIONARY APPEALS ALLOWED

98-1462. Waite v. Progressive Ins. Co.  
Huron App. No. H-97-036.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-1510. Sazima v. Chalko.  
Cuyahoga App. Nos. 72769 and 73138.  
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

98-1529. State v. Mesa.  
Cuyahoga App. No. 72699.  
Pfeifer, J., dissents.

#### DISCRETIONARY APPEALS NOT ALLOWED

98-1451. Burrell v. Kassicieh.

Seneca App. No. 13-97-54.

98-1472. Treciak v. Ohio Dept. of Commerce.  
Licking App. No. 97CA152.  
Cook, J., dissents.

98-1502. Stevens v. Manchester.  
Franklin App. No. 97APE09-1159.  
Douglas, J., dissents.

98-1508. Szabo v. Rosenberg.  
Summit App. No. 18739.  
Douglas and Pfeifer, JJ., dissent.

98-1521. Griner v. Minster Bd. of Edn.  
Auglaize App. No. 2-97-28.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

98-1522. New Artesian CR/PL v. Ohio Mini-Melt, Inc.  
Stark App. No. 97CA00004.  
Pfeifer, J., dissents.

98-1527. In re Bonner.  
Cuyahoga App. No. 73506.

98-1545. Conley-Slowinski v. Superior Spinning & Stamping Co.  
Lucas App. No. L-97-1456.  
Resnick, F.E. Sweeney and Cook, JJ., dissent.

98-1563. Bloom v. Woodline Products, Inc.  
Lake App. No. 97-L-051.  
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

98-1569. Baum v. Hamilton Cty. Sheriff's Dept.  
Hamilton App. No. C-970436.  
Pfeifer, J., dissents.

98-1578. Moore v. Knopp.  
Stark App. No. 1997CA00398.

98-1585. Ratliff v. 20th Century Constr. Co.  
Lake App. No. 97-L-074.  
Moyer, C.J., and F.E. Sweeney, J., dissent.

#### RECONSIDERATION DOCKET

96-1951. State ex rel. Lantz v. Indus. Comm.  
Franklin App. No. 95APD07-840. Reported at 83 Ohio St.3d 99,  
\_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.  
Lundberg Stratton, J., dissents.

98-1684. State ex rel. Manos v. Speese.  
Reported at 83 Ohio St.3d 1423, \_\_\_ N.E.2d \_\_\_. On motion for  
reconsideration. Motion denied.  
Douglas and F.E. Sweeney, JJ., dissent, would grant the  
motion for reconsideration, vacate the administrative entry of  
dismissal, and grant relators' motion to dismiss per Civ.R. 41.