

THE STATE OF OHIO, APPELLEE, v. KITTLE, APPELLANT.

[Cite as *State v. Kittle*, 100 Ohio St.3d 247, 2003-Ohio-5759.]

Discretionary appeal allowed on Proposition of Law No. 3 only — Certification of conflict accepted — Court of appeals' judgment reversed and cause remanded to trial court for further proceedings consistent with State v. Comer.

(Nos. 2003-1292 and 2003-1293 — Submitted September 23, 2003 — Decided November 12, 2003.)

APPEAL from and CERTIFIED by the Court of Appeals for Lucas County, No. L-01-1469, 2003-Ohio-3097.

{¶1} The discretionary appeal is allowed on Proposition of Law No. 3 only.

{¶2} The certification of conflict is accepted.

{¶3} The judgment of the court of appeals is reversed, and the cause is remanded to the trial court for further proceedings consistent with *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473.

MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, O'CONNOR and O'DONNELL, JJ., concur.

LUNDBERG STRATTON, J., dissents.

LUNDBERG STRATTON, J., dissenting.

{¶4} For the reasons expressed in Judge Grady's dissent in *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, ¶ 28-39, I respectfully dissent.

SUPREME COURT OF OHIO

Julia R. Bates, Lucas County Prosecuting Attorney, and Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Gamso, Helmick & Hoolahan and Jeffrey M. Gamso, for appellant.
