

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

August 10, 2005

[Cite as *08/10/2005 Case Announcements*, 2005-Ohio-3978.]

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## MERIT DECISIONS WITH OPINIONS

**2004-0285. State v. Reese, 2005-Ohio-3806.**

Trumbull App. No. 2002-T-0068, 2004-Ohio-341. Judgment reversed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2004-0448 and 2004-1765. State ex rel. Plain Dealer Publishing Co. v. Cleveland, 2005-Ohio-3807.**

In Mandamus. Writs denied.

Moyer, C.J., Resnick, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., concurs in part and dissents in part.

**2004-2113. Disciplinary Counsel v. Carroll, 2005-Ohio-3805.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 04-017. Gregory Alan Carroll, Attorney Registration No. 0039624, is suspended from the practice of law in Ohio for six months, stayed on condition.

Resnick, Pfeifer, Lundberg Stratton, O'Donnell and Lanzinger, JJ., concur.

Moyer, C.J., and O'Connor, J., dissent.

**2005-0260. State ex rel. Florence v. Zitter, 2005-Ohio-3804.**

In Prohibition. Writ denied.

Moyer, C.J., Resnick, Pfeifer and O'Connor, JJ., concur.

Lundberg Stratton, O'Donnell and Lanzinger, JJ., dissent.

## MERIT DECISIONS WITHOUT OPINIONS

**2004-0925. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.**

Public Utilities Commission, No. 03-2229-TP-ACE. On motion to dismiss appeal and motion for procedural stay. Motion to dismiss appeal granted. Motion for procedural stay denied as moot. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0928. State ex rel. Martin v. Ohio Adult Parole Auth.**

In Mandamus. On answer of respondent and motion to strike portions of respondent's answer. On S.Ct.Prac.R. X(5) determination, cause dismissed. Motion to strike denied as moot.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0930. State ex rel. Martin v. Hunt.**

In Mandamus. On answer of respondent and motion to strike portions of respondent's answer. On S.Ct.Prac.R. X(5) determination, cause dismissed. Motion to strike denied as moot.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0950. State ex rel. Madeline v. McKay.**

In Procedendo. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-1011. Lutz v. McBride.**

In Prohibition. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-1031. Lutz v. Corbin.**

In Prohibition. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-1131. Hogan v. Ohio Adult Parole Auth.**

In Habeas Corpus. On petition for writ of habeas corpus of William K. Hogan. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

## **MOTION AND PROCEDURAL RULINGS**

### **2001-1325. State ex rel. Shemo v. Mayfield Hts.**

In Mandamus. On motion for relief of judgment. Motion denied.

Pfeifer, J., would also award attorney fees.

O'Donnell, J., not participating.

### **2002-1350. State v. Foust.**

Cuyahoga C.P. No. CR-406021. On application for reopening under S.Ct.Prac.R. XI(6). Motion denied.

### **2003-1572. State ex rel. Howard v. Indus. Comm.**

Franklin App. No. 97AP-860. This cause came on for further consideration of the motion of the Industrial Commission of Ohio to initiate contempt proceedings against Gregory T. Howard. Upon consideration thereof,

IT IS ORDERED by the court that the motion is granted.

IT IS FURTHER ORDERED by the court, sua sponte, that appellant Gregory T. Howard show cause, within twenty days of the date of this order, why he should not be held in contempt for failure to comply with this court's March 3, 2004, and March 28, 2005, entries ordering him to pay attorneys fees to appellees Seaway Food Town and Industrial Commission of Ohio.

### **2004-1824. Marrone v. Phillip Morris, USA, Inc.**

Medina App. No. 03CA0120-M, 2004-Ohio-4874. On motion for admission pro hac vice of Stacy Canan and Michael Schuster by Richard S. Walinski. Motion granted.

### **2005-0150. Lewis v. J.E. Wiggins & Co.**

Franklin App. Nos. 04AP-469, 04AP-544, and 04AP-668. On bill and documentation in support of attorney fees filed by The Huntington National Bank in response to the court's entry of May 25, 2005. The Huntington National Bank is awarded \$28,517.

Lundberg Stratton and O'Donnell, JJ., would award \$14,000.

Pfeifer, J., would deny the award of attorney fees.

**2005-0227. Norwood v. Horney.**

Hamilton App. No. C-040683. On motion of the City of Norwood to dismiss the appeal or, in the alternative, to expedite appeal, and motion of Rookwood Partners, Ltd., to dissolve or, in the alternative, modify stay and injunction. Motions denied.

Resnick, O'Connor and O'Donnell, JJ., dissent and would dismiss the appeal.

**2005-0228. Norwood v. Gamble.**

Hamilton App. No. C-040783. On motion of the City of Norwood to dismiss the appeal or, in the alternative, to expedite appeal, and motion of Rookwood Partners, Ltd., to dissolve or, in the alternative, modify stay and injunction. Motions denied.

Resnick, O'Connor and O'Donnell, JJ., dissent and would dismiss the appeal.

**2005-0290. Hixson v. Callentine.**

Athens App. No. 04CA4, 159 Ohio App.3d 146, 2004-Ohio-5943. On motion for admission pro hac vice of Laurence J. Rabinovich by David L. Eidelberg, Esq. Motion granted.

**2005-0853. State v. Haines.**

Lake App. No. 2003-L-035, 2005-Ohio-1692. 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 April 11, 2005:

"When the victim's credibility is challenged upon cross-examination during the state's case-in-chief, may the state introduce evidence of battered woman syndrome to demonstrate the victim's state of mind, i.e., to explain why she returned to the defendant despite his aggressions toward her?"

Resnick, Pfeifer and O'Donnell, JJ., dissent.

The conflict case is *State v. Pargeon* (1991), 64 Ohio App.3d 679, 582 N.E.2d 665.

Sua sponte, cause consolidated with 2005-0959, *State v. Haines*, Lake App. No. 2003-L-035, 2005-Ohio-1692.

**2005-0971. Cementech, Inc. v. Fairlawn.**

Summit App. No. 22309, 160 Ohio App.3d 450, 2005-Ohio-1709. 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 May 5, 2005:

"Does the availability of injunctive relief, if timely filed but denied, preclude an award of lost profits in a municipal contract case?"

Resnick, J., dissents.

The conflict cases are *Cavanaugh Bld. Corp. v. Bd. of Cuyahoga Cty. Commrs.* (Jan. 27, 2000), 8<sup>th</sup> Dist. No. 75607, 2000 WL 86554, and *Hardrives Paving & Constr., Inc. v. Niles* (1994), 99 Ohio App.3d 243, 650 N.E.2d 482.

Sua sponte, cause consolidated with 2005-0970, *Cementech, Inc. v. Fairlawn*, Summit App. No. 22309, 160 Ohio App.3d 450, 2005-Ohio-1709.

**2005-0984. State v. Hull.**

Mahoning App. No. 04 MA 2, 2005-Ohio-1659. 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 May 16, 2005:

“Whether R.C. 2945.71 applies in cases where the defendant has pled no contest, the conviction has been vacated, and the reviewing court is remanding the matter for further proceedings?”

The conflict case is *State v. Parker*, 2004-Ohio-2976, 2004 WL 1277243.

Sua sponte, cause consolidated with 2004-0894, *State v. Hull*, Mahoning App. No. 04 MA 2, 2005-Ohio-1659.

**2005-0987. State v. Foushee.**

Cuyahoga App. No. 85417. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

**2005-0997. State v. Shahan.**

Franklin App. No. 05AP-114. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2005-1002. State v. Pinchback.**

Cuyahoga App. No. 83757, 2004-Ohio-4501. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-1014. State v. Curlis.**

Wood App. No. WD-04-032, 2005-Ohio-1217. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2005-0769, *State v. Curlis*, Wood App. No. WD-04-032, 2005-Ohio-1217; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-1044. State v. Rini.**

Lake App. No. 2004-L-199, 2005-Ohio-936. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-1046. State v. Colvin.**

Franklin App. No. 04AP-421, 2005-Ohio-1448. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2005-0875, *State v. Colvin*, Franklin App. No. 04AP-421, 2005-Ohio-1448; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

O'Connor, J., dissents.

**2005-1053. State v. Klein.**

Hamilton App. No. C-990066. On motion for leave to file delayed appeal. Motion denied.

**2005-1060. State v. May.**

Scioto App. No. 04CA2954. On motion for leave to file delayed appeal. Motion denied.

**2005-1062. State v. Browning.**

Muskingum App. No. CT2005-0013. On motion for leave to file delayed appeal. Motion granted.

Resnick, Lundberg Stratton and O'Donnell, JJ., dissent.

**2005-1063. Holman v. Bozsik.**

Medina App. No. 05CA0034-M. On motion for stay of trial court order. Motion denied.

**2005-1066. State v. Bajaj.**

Columbiana App. No. 03 CO 16, 2005-Ohio-2931. On motion for stay of court of appeals' judgment. Motion denied.

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

**2005-1082. State v. Hartness.**

Clermont App. No. CA2005-03-019. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and O'Connor, JJ., dissent.

**2005-1096. State v. Sanders.**

Hamilton App. No. C-030840. On motion for leave to file delayed appeal. Motion denied.

**2005-1097. State v. Newbern.**

Franklin App. No. 03AP-977, 2004-Ohio-3694. On motion for leave to file delayed appeal. Motion denied.

**2005-1099. State v. Massie.**

Pickaway App. No. 05CA2, 2005-Ohio-1053. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-1114. Jacobs v. Gateway Property Mgt.**

Cuyahoga App. No. 84973, 2005-Ohio-1983. On motion for stay of court of appeals' judgment. Motion denied.

**2005-1137. Victory White Metal Co. v. N.P. Motel Sys., Inc.**

Mahoning App. No. 04 MA 245, 2005-Ohio-2706. On amended motion for stay of court of appeals' judgment. Motion denied.

**2005-1141. State ex rel. Signer v. Russo.**

Cuyahoga App. No. 86007, 2005-Ohio-2468. On motion for expedited relief. Motion denied.

**2005-1147. State v. West.**

Cuyahoga App. No. 83779, 2004-Ohio-5212. On motion for leave to file delayed appeal. Motion denied.

**2005-1148. State v. Yockey.**

Summit App. No. 22541. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2005-1151. State v. Woodfork.**

Ross App. No. 04CA2798, 2005-Ohio-2469. On motion for stay of execution of sentence. Motion denied.

**2005-1153. State v. McDermott.**

Lucas App. No. L-03-1110, 2005-Ohio-2095. On motion for leave to file delayed appeal. Motion granted.

Resnick, Pfeifer and O'Connor, JJ., dissent.

**2005-1179. State v. Martin.**

Cuyahoga App. No. 82402, 2004-Ohio-4480. On motion for leave to file delayed appeal. Motion denied.

**2005-1223. State ex rel. Estate of Hards v. Klammer.**

Lake App. No. 2004-L-189, 2005-Ohio-2655. On motion for stay of trial court proceedings. Motion denied.

**2005-1236. State v. Lee.**

Hamilton App. No. C-040540, 2005-Ohio-3395. On motion for stay. Motion granted.

Pfeifer, J., dissents.

**APPEALS ACCEPTED FOR REVIEW**

**2005-0643. State v. Moore.**

Allen App. No. 1-04-09, 2005-Ohio-676. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0687. State v. Young.**

Hamilton App. No. C-030345. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0688. State v. Sieng.**

Franklin App. No. 04AP-556, 2005-Ohio-1003. Discretionary appeal accepted on Proposition of Law No. VI; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0710. Garcia v. O'Rourke.**

Gallia App. No. 04CA7, 2005-Ohio-1034.

Pfeifer, J., dissents.



**2005-0713. State v. Austin.**

Montgomery App. No. 20445, 2005-Ohio-1035. Discretionary appeal accepted on Proposition of Law No. II; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0723. State v. Malloy.**

Allen App. No. 1-04-64, 2005-Ohio-961. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0735. State v. Adams.**

Lake App. No. 2003-L-110, 2005-Ohio-1107. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Moyer, C.J., would accept the appeal on Proposition of Law Nos. I and II and not hold the cause.

**2005-0737. State v. Rupert.**

Lake App. No. 2003-L-154, 2005-Ohio-1098. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0745. State v. Black.**

Allen App. No. 1-04-83, 2005-Ohio-1253. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0756. Allan Nott Ent., Inc. v. Nicholas Starr Auto, LLC.**

Allen App. No. 1-04-81, 2005-Ohio-1419.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

**2005-0769. State v. Curlis.**

Wood App. No. WD-04-032, 2005-Ohio-1217. Discretionary appeal accepted; cause consolidated with 2005-1014, *State v. Curlis*, Wood App. No. WD-04-032,

2005-Ohio-1217; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Lundberg Stratton, J., would accept the appeal on Proposition of Law No. I only.

**2005-0772. State v. John.**

Lucas App. No. L-03-1261, 2005-Ohio-1218. Discretionary appeal not accepted.

Lundberg Stratton, J., dissents.

Discretionary cross-appeal accepted on Proposition of Law No. II; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Resnick and Pfeifer, JJ., dissent.

**2005-0773. State v. Stahl.**

Summit App. No. 22261, 2005-Ohio-1137.

Resnick and Pfeifer, JJ., dissent.

**2005-0785. State v. Cloud.**

Columbiana App. No. 01 CO 64, 2005-Ohio-1331. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1171, *State v. Mathis*, Cuyahoga App. No. 83311, 2004-Ohio-2982, and 2004-1267, *State v. Fair*, Cuyahoga App. No. 82278, 2004-Ohio-2971; and briefing schedule stayed.

O'Donnell, J., dissents.

**2005-0848. State v. Andrews.**

Cuyahoga App. No. 84137, 2005-Ohio-1161. Discretionary appeal accepted on Proposition of Law No. IV; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Moyer, C.J., and O'Connor, J., would also accept on Proposition of Law No. V.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

**2005-0875. State v. Colvin.**

Franklin App. No. 04AP-421, 2005-Ohio-1448. Discretionary appeal accepted on Proposition of Law No. IX; cause consolidated with 2005-1046, *State v. Colvin*, Franklin App. No. 04AP-421, 2005-Ohio-1448; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and

2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0894. State v. Hull.**

Mahoning App. No. 04 MA 2, 2005-Ohio-1659. Discretionary appeal accepted on Proposition of Law No. I and cause consolidated with 2005-0984, *State v. Hull*, Mahoning App. No. 04 MA 2, 2005-Ohio-1659.

Resnick and O'Donnell, JJ., would accept on all Propositions of Law.

Pfeifer, J., dissents.

**2005-0938. State v. Prince.**

Stark App. No. 2004CA00197, 2005-Ohio-277. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0941. State v. Suttles.**

Hamilton App. No. C-030908. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0959. State v. Haines.**

Lake App. No. 2003-L-035, 2005-Ohio-1692. Discretionary appeal accepted and cause consolidated with 2005-0853, *State v. Haines*, Lake App. No. 2003-L-035, 2005-Ohio-1692.

Resnick, Pfeifer and O'Donnell, JJ., dissent.

**2005-0970. Cementech, Inc. v. Fairlawn.**

Summit App. No. 22309, 160 Ohio App.3d 450, 2005-Ohio-1709. Discretionary appeal accepted and cause consolidated with 2005-0971, *Cementech, Inc. v. Fairlawn*, Summit App. No. 22309, 160 Ohio App.3d 450, 2005-Ohio-1709.

Resnick and Pfeifer, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2004-1523. State v. Sherrills.**

Cuyahoga App. No. 84961. Discretionary appeal not accepted. Motion to strike waiver of memorandum of response denied as moot.

**2004-1526. State v. Griffin.**

Summit App. No. 22163.

**2005-0016. Niles v. Cadwallader.**

Trumbull App. No. 2003-T-0137, 2004-Ohio-6336.

**2005-0033. Kowars v. Yount.**

Delaware App. No. 04CAE05037, 2004-Ohio-6260.

**2005-0167. State v. Campbell.**

Hamilton App. No. C-040181. Discretionary appeal not accepted. Motion to consolidate denied as moot.

**2005-0256. State v. Coniglio.**

Cuyahoga App. No. 84302, 2004-Ohio-6909.

**2005-0310. State v. Suttles.**

Hamilton App. No. C-030908.

**2005-0345. State v. Kennedy.**

Cuyahoga App. No. 83445, 2004-Ohio-6414.

**2005-0505. State v. Gapen.**

Montgomery App. No. 20454, 2005-Ohio-441. Discretionary appeal and cross-appeal not accepted.

**2005-0558. State v. Goins.**

Butler App. No. CA2004-02-054, 2005-Ohio-828. Discretionary appeal not accepted. Motion to strike judgment entry denied as moot.

**2005-0591. State v. Jones.**

Highland App. No. 04CA9, 2005-Ohio-768.

**2005-0592. State v. Bruggeman.**

Auglaize App. No. 2-04-26, 2005-Ohio-956.

**2005-0593. State v. Williams.**

Hamilton App. No. C-040692.

**2005-0596. State v. Rivera.**

Cuyahoga App. No. 84686, 2005-Ohio-623.

O'Donnell, J., dissents and would accept the discretionary appeal on Proposition of Law No. 2.

**2005-0605. State v. Smith.**

Cuyahoga App. Nos. 84687, 84688 and 84689, 2005-Ohio-2711.

**2005-0611. In re Chewning.**

Portage App. Nos. 2004-P-0021 and 2004-P-0111, 2005-Ohio-698.

**2005-0616. Sivey v. Alliance Bd. of Health.**

Stark App. No. 2004-CA-00253, 2005-Ohio-1436.

**2005-0640. Deutsche Bank Trust Co. Am. v. Daniels.**

Stark App. No. 2005CA00043.

**2005-0642. State v. Brown.**

Hamilton App. No. C-030867, 2005-Ohio-1019.

**2005-0649. State v. Goins.**

Butler App. No. CA2004-01-004.

Moyer, C.J., and O'Donnell, J., dissent and would accept the appeal on Proposition of Law No. I and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2005-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

Motion to strike notice of appeal and memorandum in support denied as moot.

**2005-0655. State v. Cossack.**

Mahoning App. No. 03-MA-263, 2005-Ohio-965.

**2005-0668. Sweet v. North Ridgeville.**

Lorain App. No. 04CA008542, 2005-Ohio-871.

**2005-0669. Hampton v. Ahmed.**

Belmont App. No. 02 BE 66, 2005-Ohio-1766.

**2005-0674. State v. Rittner.**

Fulton App. No. F-05-003.

**2005-0677. State v. Charlton.**

Lorain App. No. 04CA008509, 2005-Ohio-872.

**2005-0689. State v. West.**

Lorain App. No. 04CA008554, 2005-Ohio-990.

**2005-0693. Welsh v. Indiana Ins. Co.**

Stark App. No. 2004CA00225, 2005-Ohio-1114.  
Pfeifer, J., dissents.

**2005-0694. Fish v. Ohio Cas. Ins. Co.**

Stark App. No. 2004CA0096, 2005-Ohio-1062.  
Resnick, J., dissents.

**2005-0695. State v. Jackson.**

Allen App. No. 1-04-52, 2005-Ohio-1083.

**2005-0696. State v. Burke.**

Franklin App. No. 03AP-1241, 2005-Ohio-891.

**2005-0697. State v. Tolliver.**

Franklin App. No. 04AP-591, 2005-Ohio-989.

**2005-0699. Machnics v. Sloe.**

Geauga App. No. 2004-G-2554, 2005-Ohio-935.

**2005-0700. Senn v. Cleveland.**

Cuyahoga App. No. 84598, 2005-Ohio-765.  
O'Connor, J., dissents.

O'Donnell, J., dissents and would accept the discretionary appeal on  
Proposition of Law No. IV.

**2005-0701. Canton v. Campbell.**

Stark App. No. 2004CA00132, 2005-Ohio-1064.  
Resnick, J., dissents.  
O'Connor, J., not participating.

**2005-0706. State v. Colburn.**

Fairfield App. No. 04 CA 44, 2005-Ohio-1111.

**2005-0707. Burkey v. Elyria Maintenance Co.**

Lorain App. No. 04CA008553, 2005-Ohio-992.

**2005-0718. Buoscio v. Jackson Natl. Life Ins. Co., Inc.**

Franklin App. No. 05AP-148.

**2005-0721. Graham v. Audio Clinic.**

Hancock App. No. 5-04-35, 2005-Ohio-1088.

**2005-0726. In re Annexation of 259.15 Acres.**

Lucas App. No. L-04-1042, 159 Ohio App.3d 736, 2005-Ohio-1027.

Resnick, J., not participating.

**2005-0728. State v. Phutseevong.**

Lucas App. No. L-03-1178, 2005-Ohio-1031.

**2005-0738. State v. Doriott.**

Warren App. No. CA2005-03-028.

**2005-0741. State v. Colon.**

Lorain App. No. 04CA008524, 2005-Ohio-993.

Lundberg Stratton, J., dissents.

**2005-0743. Creaturo v. Duko.**

Columbiana App. No. 04 CO 1, 2005-Ohio-1342. Discretionary appeal not accepted.

Pfeifer, J., dissents.

On motion for admission pro hac vice of Joseph N. Kravec, Jr., by Clair M. Carlin, Esq. Motion granted.

**2005-0744. State v. Howard.**

Hamilton App. No. C-040387.

**2005-0746. St. Paul Fire & Marine Ins. Co. v. Morrison.**

Stark App. No. 2004CA00053, 2005-Ohio-1233.

Resnick and Pfeifer, JJ., dissent.

**2005-0753. State v. Crump.**

Logan App. No. 8-04-24, 2005-Ohio-1089.

Lundberg Stratton and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law No. II and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2005-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

**2005-0754. State v. Johnson.**

Lucas App. No. L-03-1206, 2005-Ohio-1222.

**2005-0760. Headings v. Ranco Inc.**

Union App. No. 14-04-33, 2005-Ohio-1095.

Resnick and Pfeifer, JJ., dissent.

**2005-0761. Monroe v. WFO Corp.**

Warren App. No. CA2004-03-032, 2005-Ohio-1080. Discretionary appeal not accepted.

Moyer, C.J., dissents.

On motion for admission pro hac vice of Scott D. Bergthold by K. Philip Callahan. Motion granted.

**2005-0762. State v. McIntosh.**

Franklin App. No. 04AP-296, 2005-Ohio-1152.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. II.

**2005-0765. State v. Bohannon.**

Hamilton App. No. C-040415.

**2005-0776. White v. Roch.**

Summit App. No. 22239, 2005-Ohio-1127.

Pfeifer, J., dissents.

**2005-0780. State v. Jones.**

Montgomery App. No. 20349, 2005-Ohio-1208.

Lundberg Stratton, J., dissents.

**2005-0781. Telxon Corp. v. Smart Media of Delaware, Inc.**

Summit App. Nos. 22098 and 22099.

Pfeifer and O'Connor, JJ., dissent.

**2005-0782. Klauss v. Marc Glassman, Inc.**



Cuyahoga App. No. 84799, 2005-Ohio-1306.  
Pfeifer and Lundberg Stratton, JJ., dissent.

**2005-0783. Waste Mgt. of Ohio, Inc. v. Bd. of Health of Cincinnati.**

Franklin App. Nos. 04AP-437, 04AP-438, 04AP-443, 04AP-444, 04AP-717 and 04AP-719, 159 Ohio App.3d 806, 2005-Ohio-1153.  
Moyer, C.J., dissents.

**2005-0786. Marusa v. Brunswick.**

Medina App. No. 04CA0038-M, 2005-Ohio-1135.

**2005-0787. Sauter v. One Lytle Place.**

Hamilton App. No. C-040266, 2005-Ohio-1183.

**2005-0788. Kozma v. AEP Energy Serv., Inc.**

Franklin App. No. 04AP-643, 2005-Ohio-1157.  
Pfeifer, J., dissents.

**2005-0792. Bozsik v. Ross.**

Wayne App. No. 04CA0049. Discretionary appeal not accepted. Motion to produce/transmit record denied as moot.

**2005-0796. State v. Flannery.**

Richland App. No. 03-CA-24, 2005-Ohio-1614.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I, III and VI and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

O'Connor and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law No. III and hold the cause for the same decisions.

**2005-0810. Truman v. Clay Center.**

Ottawa App. No. OT-04-023, 160 Ohio App.3d 78, 2005-Ohio-1385.  
Resnick and Lanzinger, JJ., dissent.

**2005-0811. N. Ohio Sewer Contrs., Inc. v. Bradley Dev. Co., Inc.**

Cuyahoga App. No. 84693, 159 Ohio App.3d 794, 2005-Ohio-1014.

**2005-0812. In re Guardianship of Brady.**

Cuyahoga App. Nos. 84517 and 84743, 2005-Ohio-287.

**2005-0815. State v. Sanford.**

Cuyahoga App. No. 84478, 2005-Ohio-1009.

**2005-0821. Flaim v. Med. College of Ohio.**

Franklin App. No. 04AP-1131, 2005-Ohio-1515.

**2005-0822. State v. Lawhun.**

Crawford App. Nos. 3-05-07 and 3-05-08.

**2005-0824. Argonaut Great Cent. Ins. Co. v. Our Lady of Perpetual Help Community, Inc.**

Hamilton App. No. C-050172. Discretionary appeal not accepted.

Resnick, J., dissents.

Motion to strike memorandum in support of jurisdiction denied as moot.

**2005-0834. State v. Green.**

Lorain App. No. 05CA008645.

**2005-0837. Huntsman v. Aultman Hosp.**

Stark App. No. 2004CA00124, 160 Ohio App.3d 196, 2005-Ohio-1482.

Pfeifer, J., dissents.

**2005-0840. State v. Anderson.**

Hamilton App. No. C-040304.

**2005-0849. Walsh v. Cuyahoga Cty. Auditor.**

Cuyahoga App. No. 84584, 2005-Ohio-1172.

**2005-0852. State v. Muntaser.**

Cuyahoga App. No. 84951, 2005-Ohio-1309.

**2005-0857. State v. Kimbro.**

Lorain App. No. 05CA008642.

**2005-0858. Howard v. Davidson-Brown Corp.**

Defiance App. No. 4-04-24, 2005-Ohio-1423.

**2005-0860. State v. Carr-Poindexter.**

Montgomery App. No. 20197, 2005-Ohio-1571.

**2005-0872. State v. Page.**

Cuyahoga App. No. 84341, 2005-Ohio-1493.

**2005-0874. State v. Hammons.**

Warren App. No. CA2004-01-008, 2005-Ohio-1409.

**2005-0877. State v. Nance.**

Montgomery App. No. 20951.

**2005-0889. State v. Canfield.**

Medina App. No. 03CA0078-M, 2004-Ohio-2123.

**2005-0892. Guest v. Erie Metro. Hous. Auth.**

Erie App. No. E-04-035, 2005-Ohio-1552.

**2005-0895. State v. Bennett.**

Ashtabula App. No. 2002-A-0020, 2005-Ohio-1567.

**2005-0901. State v. Copeland.**

Hamilton App. No. C-030907.

**2005-0908. State v. Wilson.**

Montgomery App. No. 20930.

**2005-0912. State v. Singletary.**

Montgomery App. No. 17352.

**2005-0914. State v. Hughes.**

Mahoning App. No. 02 CA 15, 2003-Ohio-6094, 2004-Ohio-1195 and 2005-Ohio-1655.

**2005-0920. State v. Zuniga.**

Portage App. Nos. 2003-P-0082 and 2004-P-0002, 2005-Ohio-2078.

**2005-0922. State v. Qualls.**

Meigs App. No. 04CA9.

**2005-0926. State v. Zufall.**

Stark App. No. 2005CA00084.

**2005-0927. State v. Berry.**

Butler App. No. CA2003-02-053, 159 Ohio App.3d 476, 2004-Ohio-6027.

**2005-0931. State v. Grooms.**

Summit App. No. 18558.

Pfeifer, J., dissents.

**2005-0960. State v. Browner.**

Hamilton App. No. C-030766.

**2005-0961. State v. Nerghes.**

Medina App. No. 03CA0049-M, 2004-Ohio-1235.

**2005-0981. State v. Dowell.**

Cuyahoga App. No. 83575, 2004-Ohio-3870 and 2005-Ohio-1966.

**2005-0993. State v. Brown.**

Hamilton App. No. C-040103.

Moyer, C.J., and O'Connor, J., dissent.

**2005-1055. In re Hines.**

Tuscarawas App. No. 2004AP120072, 2005-Ohio-2266.

**2005-1079. State v. Golston.**

Summit App. No. 22154, 2005-Ohio-8.

**2005-1083. In re Dailey.**

Franklin App. No. 04AP-1346, 2005-Ohio-2196.

**2005-1098. State v. Tolliver.**

Franklin App. No. 02AP-811, 2005-Ohio-2194.

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I.

**RECONSIDERATION OF PRIOR DECISIONS**

**2004-1269. State ex rel. Eckerly v. Indus. Comm.**

Franklin App. No. 03AP-621, 2004-Ohio-3934. Reported at 105 Ohio St.3d 428, 2005-Ohio-2587, 828 N.E.2d 97. On motion for reconsideration. Motion denied.

**2004-2060. State v. McKinney.**

Defiance App. No. 4-04-12, 2004-Ohio-5518. Reported at 105 Ohio St.3d 1561, 2005-Ohio-2447, 828 N.E.2d 116. On motion for reconsideration. Motion denied.

**2005-0281. Cincinnati Ins. Co. v. Preserving Affordable Hous., Inc.**

Hamilton App. No. C-040006, 2004-Ohio-7128. Reported at 105 Ohio St.3d 1561, 2005-Ohio-2447, 828 N.E.2d 117. On motion for reconsideration. Motion denied.  
Pfeifer, J., dissents.

**2005-0295. In re Guardianship of Rinehart.**

Montgomery App. No. 20376. Reported at 105 Ohio St.3d 1562, 2005-Ohio-2447, 828 N.E.2d 117. On motion for reconsideration. Motion denied.

**2005-0356. Coleman v. E. Cleveland City School Dist. Bd. of Edn.**

Cuyahoga App. Nos. 84328 and 84636, 2004-Ohio-7019. Reported at 105 Ohio St.3d 1563, 2005-Ohio-2447, 828 N.E.2d 118. On motion for reconsideration. Motion denied.

**2005-0389. Architectural Interior Prod., Inc. v. Miarer Transp., Inc.**

Muskingum App. No. 2004 CA 0027, 2005-Ohio-170. Reported at 105 Ohio St.3d 1564, 2005-Ohio-2447, 828 N.E.2d 118. On motion for reconsideration. Motion denied.

**2005-0435. In re Estate of Wilkerson.**

Summit App. No. 22049, 2005-Ohio-159. Reported at 105 Ohio St.3d 1564, 2005-Ohio-2447, 828 N.E.2d 118. On motion for reconsideration. Motion denied.

**2005-0440. State ex rel. Bozsik v. Collier.**

In Mandamus. Reported at 105 Ohio St.3d 1557, 2005-Ohio-2447, 828 N.E.2d 113. On motion for reconsideration. Motion denied.