

**THE STATE OF OHIO, APPELLANT, v. MUTTER, APPELLEE.**

[Cite as *State v. Mutter*, 117 Ohio St.3d 536, 2008-Ohio-1591.]

*Certified question answered and court of appeals' judgment affirmed on the authority of Hyle v. Porter.*

(Nos. 2007-0637 and 2007-0639 — Submitted March 12, 2008 — Decided April 9, 2008.)

APPEAL from and CERTIFIED by the Court of Appeals for Montgomery County, No. 21374, 171 Ohio App.3d 563, 2007-Ohio-1052.

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{¶ 1} The certified question is answered in the affirmative and the judgment of the court of appeals is affirmed on the authority of *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, LANZINGER, and CUPP, JJ., concur.

O'DONNELL, J., dissents.

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Mathias H. Heck Jr., Montgomery County Prosecuting Attorney, and Johnna M. Shia, Assistant Prosecuting Attorney, for appellant.

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