

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 6, 2009

[Cite as *05/06/2009 Case Announcements*, 2009-Ohio-2045.]

MERIT DECISIONS WITH OPINIONS

2008-2405. Disciplinary Counsel v. Wineman, Slip Opinion No. 2009-Ohio-2005.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 07-076. Reese Mark Wineman, Attorney Registration No. 0032268, is suspended from the practice of law in Ohio for two years, stayed on conditions.

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

2008-2407. Cleveland Bar Assn. v. Slavin, Slip Opinion No. 2009-Ohio-2015.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 07-099. Jeffrey F. Slavin, Attorney Registration No. 0002657, is suspended from the practice of law in Ohio for one year, with six months stayed on condition.

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

Pfeifer and O'Donnell, JJ., dissent and would suspend respondent from the practice of law in Ohio for one year but would stay the entire suspension on condition.

2009-0041. Disciplinary Counsel v. Large, Slip Opinion No. 2009-Ohio-2022.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 08-038. John Harold Large, Attorney Registration No. 0068732, is suspended from the practice of law in Ohio for one year.

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

MERIT DECISIONS WITHOUT OPINIONS

2009-0382. State ex rel. Hall v. Court of Appeals, Third Appellate Dist.

In Mandamus. On relator's complaint and motions to consolidate with 2009-0381, *State v. Hall*, Putnam App. No. 12-08-09, and to decide with 2009-0182, *State ex rel. Wells v. Jefferson Cty. Court of Common Pleas*, Jefferson App. No. 08 JE 28, 2008-Ohio-6972.

On S.Ct.Prac.R. X(5) determination, cause dismissed. Motions denied.

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

Cupp, J., not participating.

2009-0410. State ex rel. Brown v. Court of Appeals, First Appellate Dist.

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

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

2009-0444. [State ex rel.] Johnson v. Ward.

In Mandamus. On amended motion to dismiss relator's original and first amended complaint. Motion to dismiss granted. Cause dismissed.

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

2009-0524. Quinn v. Hudson.

In Habeas Corpus. On petition for writ of habeas corpus of James E. Quinn. Sua sponte, cause dismissed.

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

2009-0551. Holcomb v. Bradshaw.

In Habeas Corpus. On petition for writ of habeas corpus of Daniel Holcomb. Sua sponte, cause dismissed.

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

Lanzinger, J., dissents and would order a return on the writ.

MOTION AND PROCEDURAL RULINGS

1996-2455. State v. Keene.

Montgomery App. No. 14375. On motion to set execution date. Motion granted. It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Tuesday, July 21, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the clerk of the Court of Common Pleas of Montgomery County.

Pfeifer, J., dissents.

2008-1499. State v. Jackson.

Stark App. No. 2007CA00274, 2008-Ohio-2944. On motion for admission pro hac vice of David M. Lieberman by Benjamin C. Mizer. Motion granted.

2008-2150. State v. Garltic.

Cuyahoga App. No. 90128, 2008-Ohio-4575. On amended motion to dismiss appeal. Motion denied.

Pfeifer and Lanzinger, JJ., dissent.

2009-0267. State ex rel. Ohio Concrete Constr. Assn. v. Ohio Dept. of Transp.

In Mandamus. On relator's amended complaint and respondent's answer and motion to refer case to mediation and for stay pending outcome. Motion to refer case to mediation and for stay denied.

Sua sponte, an alternative writ is granted, and the following schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within 30 days of the date of this entry; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

2009-0280. State ex rel. Ohio Concrete Constr. Assn. v. Ohio Dept. of Transp.

In Mandamus. On relator's complaint and respondent's answer and motion to refer case to mediation and for stay pending outcome. Motion to refer case to mediation and for stay denied.

Sua sponte, an alternative writ is granted, and the following schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within 30 days of the date of this

entry; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

2009-0485. State v. Wright.

Warren App. No. CA2008-03-039, 2008-Ohio-6765. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lundberg Stratton, and Cupp, JJ., dissent.

2009-0487. State v. Cobb.

Butler App. No. CA2007-06-153, 2008-Ohio-5210. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0502. State v. Painson.

Summit App. No. 24164, 2008-Ohio-6623. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2009-0515. State v. Johnson.

Lucas App. No. L-08-1022, 2009-Ohio-271. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Lanzinger, JJ., dissent.

2009-0518. Hameed v. Rhoades.

Cuyahoga App. No. 92580. On motion for stay of proceedings pending appeal. Motion denied.

2009-0520. State v. Moore.

Ottawa App. No. OT-08-009, 2008-Ohio-6398. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0536. State v. Hanni.

Cuyahoga App. No. 91014, 2009-Ohio-139. On motion for leave to file delayed appeal. Motion granted.

O'Connor, Lanzinger, and Cupp, JJ., dissent.

2009-0545. State v. Patterson.

Muskingum App. No. CT2008-0054, 2009-Ohio-273. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2008-2127 and 2008-2249, *State v. Rohrbaugh*, Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781; cause consolidated with 2009-0455, *State v. Patterson*, Muskingum App. No. CT2008-0054, 2009-Ohio-273; and briefing schedule stayed.

Pfeifer, J., dissents.

2009-0553. ABN AMRO Mtge. Group, Inc. v. Kangah.

Cuyahoga App. No. 91401, 2009-Ohio-359. 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 March 18, 2009:

“Whether the doctrine of equitable subrogation applies when a prior lien is satisfied with loan proceeds and (1) the party asserting the doctrine intended to hold the first and best lien, and (2) the competing lienholder had the expectation that its interest would be junior at the time that it received its interest, where the party asserting the doctrine has no actual knowledge of the competing lien due to its mistake or the mistake of a third party.”

The conflict cases are *Alegis Group L.P. v. Lerner*, Delaware App. No. 2004-CAE-05038, 2004-Ohio-6205; *Leppo, Inc. v. Kiefer* (Jan. 31, 2001), Summit App. Nos. 20097 and 20105; and *Assoc. Financial Serv. Corp. v. Miller*, Portage App. No. 2001-P-46, 2002-Ohio-1610.

2009-0563. State v. Wilson.

Montgomery App. No. 22581, 2009-Ohio-525. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Lanzinger, JJ., dissent.

2009-0572. State v. Imburgia.

Cuyahoga App. No. 92527. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lanzinger, JJ., dissent.

2009-0594. N. Olmsted v. Internatl. Assn. of Firefighters, Local 1267.

Cuyahoga App. Nos. 91300, 91301, and 91724, 2009-Ohio-960. On motion for stay of court of appeals' judgment. Motion granted.

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

2009-0608. Presley v. Fraley.

Franklin App. No. 08AP-767, 2009-Ohio-1558. On motion for stay of court of appeals' judgment pending appeal. Motion granted.

Pfeifer and O'Donnell, JJ., dissent.

2009-0631. In re R.W.

Cuyahoga App. No. 91923, 2009-Ohio-1255. On motion for immediate stay of court of appeals' judgment. Motion denied.

2009-0678. State v. Pepka.

Lake App. No. 2008-L-016, 2009-Ohio-1440. On motion for stay of court of appeals' judgment. Motion denied.

Lundberg Stratton and Cupp, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2009-0089. State v. Briscoe.

Cuyahoga App. No. 89979, 2008-Ohio-6276. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-1725, *State v. Lester*, Hamilton App. No. C-070383, 2008-Ohio-3570.

Pfeifer and O'Donnell, JJ., dissent.

2009-0104. Pennsylvania Gen. Ins. Co. v. Park-Ohio Industries, Inc.

Cuyahoga App. No. 90619, 179 Ohio App.3d 385, 2008-Ohio-5991. Discretionary appeal accepted on Proposition of Law No. I.

Moyer, C.J., and Lundberg Stratton and O'Connor, JJ., would also accept the appeal on Proposition of Law Nos. II and III.

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

Motion for admission pro hac vice of Elaine Whiteman Klinger by Richard M. Garner granted.

2009-0189. In re A.R.

Licking App. No. 08-CA-17, 2008-Ohio-6581. Discretionary appeal accepted. Briefing shall proceed on Proposition of Law No. I, and oral argument on Proposition of Law No. I shall be held on the same day as 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234.

Proposition of Law Nos. II and III are held for the decision in 2008-1624, *In re Smith*, and briefing is stayed as to those propositions of law.

Pfeifer, J., would also order briefing and oral argument on Proposition of Law Nos. II and III.

O'Donnell and Cupp, JJ., dissent.

2009-0211. Natl. Solid Wastes Mgt. Assn. v. Stark-Tuscarawas-Wayne Joint Solid Waste Mgt. Dist.

Stark App. No. 2008CA00011, 2008-Ohio-6585.

Pfeifer and Lanzinger, JJ., dissent.

2009-0223. In re A.R.

Warren App. No. CA2008-03-036, 2008-Ohio-6566. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234; and briefing schedule stayed.

Lundberg Stratton, J., would also accept the appeal on Proposition of Law No. II.

2009-0228. Osnaburg Twp. Zoning Inspector v. Eslich Environmental, Inc.

Stark App. No. 2008CA00026, 2008-Ohio-6671.

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

2009-0249. Wimmer Family Trust v. FirstEnergy.

Lorain App. No. 08CA009392, 2008-Ohio-6870. Discretionary appeal accepted; cause held for the decision in 2008-0708, *Corrigan v. Illuminating Co.*, Cuyahoga App. No. 89402, 175 Ohio App.3d 360, 2008-Ohio-684; and briefing schedule stayed.

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

Pfeifer, J., would accept the appeal but not hold the cause.

O'Connor, J., dissents.

2009-0299. State v. Roberts.

Hamilton App. No. C-080571, 2008-Ohio-6827.

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

2009-0321. Elevators Mut. Ins. Co. v. J. Patrick O'Flaherty's, Inc.

Sandusky App. No. S-08-006, 2008-Ohio-6946.

Pfeifer and O'Donnell, JJ., dissent.

2009-0455. State v. Patterson.

Muskingum App. No. CT2008-0054, 2009-Ohio-273. Discretionary appeal accepted; cause held for the decision in 2008-2127 and 2008-2249, *State v. Rohrbaugh*, Logan App. No. 8-07-28, 178 Ohio App.3d 211, 2008-Ohio-4781; cause consolidated with 2009-0545, *State v. Patterson*, Muskingum App. No. CT2008-0054, 2009-Ohio-273; and briefing schedule stayed.

Pfeifer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2008-2042. State v. Whitaker.

Scioto App. No. 07CA3168.

2008-2223. State v. Newman.

Ottawa App. No. OT-07-051, 2008-Ohio-5139.

2008-2267. State v. Simmons.

Montgomery App. No. 22412, 2008-Ohio-5386.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. I.

2009-0017. Mollette v. Portsmouth City Council.

Scioto App. No. 07CA3206, 179 Ohio App.3d 455, 2008-Ohio-6342.
Discretionary appeal and cross-appeal not accepted.

2009-0070. State v. Kelley.

Jefferson App. No. 08 JE 4, 179 Ohio App.3d 666, 2008-Ohio-6598.
Discretionary appeal not accepted. Motion to listen to audio tape and for transcripts to be documented denied as moot.

2009-0082. State v. White.

Cuyahoga App. No. 90839, 2008-Ohio-6152.

2009-0085. Day v. Pleasant Lake Villa.

Cuyahoga App. Nos. 92279 and 92288.

O'Connor and Cupp, JJ., dissent.

2009-0086. State v. Ward.

Summit App. No. 24105, 2008-Ohio-6133.

2009-0102. State v. Brooks.

Defiance App. No. 4-08-09, 2008-Ohio-6188.

Cupp, J., not participating.

2009-0107. State v. Walther.

Greene App. No. 2007 CA 103, 2008-Ohio-6049. Discretionary appeal not accepted. Motion for leave to file judgment entry denied as moot.

2009-0114. State v. Helton.

Logan App. No. 8-08-30.

Cupp, J., not participating.

2009-0117. Ryan v. Ryan.

Belmont App. No. 07-BE-48, 2008-Ohio-6358.

2009-0120. State v. Major.

Erie App. No. E-08-030, 2008-Ohio-6534.

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

Cupp, J., not participating.

2009-0123. State v. Weathers.

Lucas App. No. L-08-1044, 2008-Ohio-6405.

2009-0136. State v. Lewis.

Summit App. No. 24236, 179 Ohio App.3d 649, 2008-Ohio-6256.

2009-0137. State v. Schandel.

Carroll App. No. 07-CA-848, 2008-Ohio-6359.

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

2009-0138. Smith v. Locke-Calhoun.

Cuyahoga App. No. 90858, 2008-Ohio-5870.

2009-0149. Kutney v. Goldstein.

Hamilton App. No. C-080499.

2009-0158. Earley v. State.

Cuyahoga App. No. 91230, 2008-Ohio-5752.

2009-0163. State v. McQueen.

Mahoning App. No. 08 MA 24, 2008-Ohio-6589.

2009-0164. Gregory v. Gregory.

Clinton App. Nos. CA2008-02-006 and CA2008-06-018, 2008-Ohio-6760.

2009-0187. State v. Maag.

Hancock App. No. 5-08-35, 2009-Ohio-90.

Cupp, J., not participating.

2009-0191. In re Rhym.

Marion App. No. 9-08-62.

Moyer, C.J., and Lundberg Stratton and O'Connor, JJ., dissent and would accept the appeal and hold the cause for the decision in 2008-1562, *In re Poling*, Hardin App. No. 6-08-09.

2009-0192. State v. Valentine.

Hamilton App. No. C-080263.

2009-0196. State v. Hairston.

Cuyahoga App. No. 70745, 2009-Ohio-1678.

2009-0197. Opincar v. F.J. Spanulo Constr.

Cuyahoga App. No. 91255, 2008-Ohio-6286.

2009-0200. Muskingum Watershed Conservancy Dist. v. Blackwell.

Tuscarawas App. Nos. 2007 AP 09 0057, 2007 AP 09 0058, 2007 AP 09 0059, 2007 AP 09 0060, and 2007 AP 09 0061, 2008-Ohio-6903.

O'Donnell, J., dissents.

2009-0203. Griffith v. Miamisburg.

Franklin App. No. 08AP-557, 2008-Ohio-6611.

Lundberg Stratton, J., dissents.

2009-0204. State v. Jones.

Lake App. No. 2008-L-028, 2008-Ohio-6559.

2009-0206. State v. Bohannon.

Hamilton App. No. C-080130.

2009-0212. Westfield Ins. Co. v. Porchervina.

Lake App. No. 2008-L-025, 2008-Ohio-6558.

2009-0217. State v. Steward.

Highland App. No. 08CA7.
Moyer, C.J., dissents.

2009-0219. Hogan v. Hogan.

Warren App. No. CA2007-12-137, 2008-Ohio-6571.

2009-0220. GMS Mgt. Co., Inc. v. Nguyen.

Wayne App. No. 08CA0014, 2008-Ohio-6574.

2009-0221. Kansas St. James Parish of Ohio v. Catholic Diocese of Toledo in Am.

Seneca App. No. 13-08-19, 2008-Ohio-6577.

2009-0222. State v. O’Neal.

Medina App. No. 08CA0028-M, 2008-Ohio-6572.

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

2009-0231. State v. Ferguson.

Franklin App. No. 07AP-999, 2008-Ohio-6677.

2009-0244. Ratliff v. Brannum.

Greene App. No. 2008-CA-05, 2008-Ohio-6732.

2009-0247. State v. Flanders.

Lorain App. No. 08CA009382, 2008-Ohio-6743.

2009-0248. State v. Prater.

Clark App. No. 06-CA-89, 2008-Ohio-6730.

2009-0253. State v. Turner.

Montgomery App. No. 22777, 2008-Ohio-6836.

2009-0256. Schneider v. Eady.

Lorain App. No. 07CA009273, 2008-Ohio-6747.

O’Connor, J., not participating.

2009-0257. Luscre-Miles v. Ohio Dept. of Edn.

Portage App. No. 2008-P-0048, 2008-Ohio-6781.

Pfeifer, Lundberg Stratton, and O’Donnell, JJ., dissent.

2009-0258. State ex rel. Farmakis v. Conneaut.

Ashtabula App. No. 2008-A-0013, 2008-Ohio-6774.

2009-0259. Cincinnati Ins. Co. v. Stacey.

Clinton App. No. CA2008-06-019, 2008-Ohio-6761.

2009-0260. Chardon v. Bulman.

Geauga App. No. 2007-G-2811, 2008-Ohio-6769.

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

2009-0266. State v. Norman.

Hamilton App. No. C-080192.

2009-0268. State v. Love.

Hamilton App. No. C-080184, 2008-Ohio-6833.

O'Donnell, J., dissents.

2009-0270. State v. Goza.

Cuyahoga App. No. 91085, 2008-Ohio-6493.

2009-0271. State v. Raymond.

Franklin App. No. 08AP-78, 2008-Ohio-6814.

Moyer, C.J., and Lanzinger and Cupp, JJ., dissent.

2009-0275. Great Lakes Capital Partners Ltd. V. Plain Dealer Pub. Co.

Cuyahoga App. No. 91215, 2008-Ohio-6495.

O'Connor and O'Donnell, JJ., dissent.

2009-0277. State v. Smith.

Stark App. No. 2008CA00071, 2008-Ohio-6845.

2009-0284. State v. Donahue.

Cuyahoga App. No. 91079, 2008-Ohio-6491.

2009-0285. State v. Smith.

Cuyahoga App. No. 90684, 2008-Ohio-6474.

2009-0286. State v. Howard.

Hamilton App. No. C-070855.

2009-0289. Muter v. Muter.

Summit App. No. 24323, 2008-Ohio-6794.

Pfeifer and Lundberg Stratton, JJ., dissent.

2009-0291. Long v. Erie Ins. Co.

Fairfield App. No. 2007 CA 67, 2008-Ohio-7034.

Pfeifer, J., dissents.

2009-0295. State v. Lundy.

Cuyahoga App. No. 90712, 2008-Ohio-6848.

2009-0300. State v. Harrison.

Cuyahoga App. No. 91158, 2008-Ohio-6851.

2009-0307. State v. Smith.

Cuyahoga App. No. 90797, 2008-Ohio-6642.

2009-0324. State v. Robertson.

Franklin App. No. 08AP-15, 2008-Ohio-6909.

2009-0329. State v. Turner.

Cuyahoga App. No. 91695, 2008-Ohio-6648.

Lanzinger, J., dissents.

2009-0337. State v. Smith.

Cuyahoga App. No. 90996, 2008-Ohio-6954.

2009-0340. State v. Allen.

Franklin App. No. 08AP-264, 2008-Ohio-6916.

2009-0354. State v. Driskill.

Mercer App. No. 10-06-35.

Cupp, J., not participating.

2009-0369. State v. Jordan.

Franklin App. No. 06AP-96, 2006-Ohio-6224.

2009-0377. State v. Petty.

Richland App. No. 2007CA00050, 2008-Ohio-5962.

2009-0378. State v. Foreman.

Hancock App. No. 5-07-17, 2008-Ohio-4408.

2009-0381. State v. Hall.

Putnam App. No. 12-08-09. Discretionary appeal not accepted. Motions to consolidate and to decide denied as moot.

Cupp, J., not participating.

2009-0386. State v. Wilkins.

Clinton App. No. CA2007-03-007, 2008-Ohio-2739.

2009-0391. State v. Robinson.

Union App. No. 14-07-20, 177 Ohio App.3d 560, 2008-Ohio-4160.

2009-0413. State v. Rosemond.

Hamilton App. No. C-060578, 2007-Ohio-6333.

2009-0490. In re S.K.

Clark App. Nos. 2008 CA 67, 2008 CA 68, and 2008 CA 69, 2009-Ohio-427.

2009-0516. State v. Reid.

Franklin App. No. 07AP-91.

RECONSIDERATION OF PRIOR DECISIONS

2008-2219. State v. Perkins.

Franklin App. No. 07AP-924, 2008-Ohio-5060. Reported at 121 Ohio St.3d 1409, 2009-Ohio-805, 902 N.E.2d 33. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

2008-2261. Knowles v. Voorhies.

Noble App. No. 08-NO-352, 2008-Ohio-5396. Reported at 121 Ohio St.3d 271, 2009-Ohio-1109, 903 N.E.2d 637. On motion for reconsideration. Motion denied.

2008-2325. Simeone v. Schwebel Baking Co.

Cuyahoga App. No. 90668, 2008-Ohio-5254. Reported at 121 Ohio St.3d 1410, 2009-Ohio-805, 902 N.E.2d 34. On motion for reconsideration. Motion denied.

2008-2499. State v. Davis.

Hamilton App. No. C-040665, 2006-Ohio-3171. Reported at 121 Ohio St.3d 1411, 2009-Ohio-805, 902 N.E.2d 35. On motion for reconsideration. Motion denied.
Cupp, J., dissents.