

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

May 22, 2013

[Cite as *05/22/2013 Case Announcements*, 2013-Ohio-2062.]

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## MERIT DECISIONS WITHOUT OPINIONS

**2013-0315. Haselman v. Rittner.**

Fulton App. No. F-12-017. On review of order certifying a conflict. It is determined that no conflict exists. Cause dismissed.

O'Connor, C.J., and Pfeifer, Kennedy, and O'Neill, JJ., concur.

O'Donnell, Lanzinger, and French, JJ., dissent.

**2013-0371. Jordan v. Fain.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2013-0375. Steinberg v. Durkin.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2013-0413. State ex rel. Cioffi v. Rice.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2013-0434. State ex rel. Gilcreast v. Gallagher.**

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

Pfeifer, Acting C.J., O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

O'Connor, C.J., not participating.

**2013-0528. Fountain v. Pineda.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2013-0537. State v. Poole.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**MOTION AND PROCEDURAL RULINGS**

**1987-0447. State v. Henderson.**

Hamilton App. No. C-850557. On motion for new trial. Motion denied. On motion for appointment of qualified legal counsel and motion to stay in abeyance. Motions denied as moot. On successive postconviction petition. Petition dismissed.

**2012-0169. Stammco, L.L.C. v. United Tel. Co. of Ohio.**

Fulton App. No. F-11-003, 2011-Ohio-6503. On motion to strike notices of additional authority. Motion granted in part as to the parentheticals and denied as to the case citations.

O'Connor, C.J., would deny the motion to strike in its entirety.

**2013-0295. State ex rel. Davet v. Sutula.**

In Mandamus. On respondent's motion to declare relator a vexatious litigator under St.Ct.Prac.R. 4.03(B). Motion granted. Richard F. Davet is found to be a vexatious litigator under S.Ct.Prac.R. 4.03(B).

It is ordered that Richard F. Davet is prohibited from continuing or instituting legal proceedings in this court without first obtaining leave. Any request for leave shall be submitted to the clerk of this court for the court's review.

On consideration of intervening respondent's motion to join respondent's motion to declare relator a vexatious litigator under S.Ct.Prac.R. 4.03(B). Motion denied.

**2013-0364. State ex rel. Fox v. Walters.**

In Mandamus. On motion to consolidate with case No. 2012-1742, *State ex rel. Sylvester v. Neal*. Motion granted. Upon consideration of respondents' motions to dismiss, it is ordered by the court that the motions are denied and that an alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05:

The parties shall file any evidence they intend to present within 20 days after the date of this entry; relator shall file a brief within 10 days after the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondent's brief.

It is further ordered that the state solicitor may file an amicus brief within 20 days of the filing of relators' brief.

**2013-0453. U.S. Bank v. Downey.**

Cuyahoga App. No. 98598, 2013-Ohio-494. On second emergency motion for stay of lower-court decision. Motion denied as moot.

O'Neill, J., dissents.

**2013-0476. State v. Johnson.**

Portage App. No. 2012-P-0008, 2013-Ohio-440. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, Kennedy, and French, JJ., dissent.

**2013-0510. State v. Mason.**

Franklin App. No. 12AP-391, 2013-Ohio-174. On motion for delayed appeal. Motion denied.

Pfeifer, Lanzinger, and O'Neill, JJ., dissent.

**2013-0511. State v. Crangle.**

Summit App. No. 24033, 2008-Ohio-5703. On motion for delayed appeal. Motion denied.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

**2013-0516. State v. Griffin.**

Lorain App. No. 11CA010128, 2013-Ohio-416. On motion for delayed appeal. Motion granted.

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

**2013-0520. State v. Robinson.**

Summit App. No. 26359. On motion for delayed appeal. Motion denied.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

**2013-0533. State v. Eicholtz.**

Clark App. No. 2012-CA-7, 2013-Ohio-302. On motion for delayed appeal. Motion granted.

O'Connor, C.J., dissents.

**2013-0542. State v. Zoekler.**

Portage App. No. 2012-P-0092, 2013-Ohio-548. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, Kennedy, and French, JJ., dissent.

**2013-0544. State v. Straley.**

Clark App. No. 2012-CA-34, 2013-Ohio-510. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' entry filed March 25, 2013:

“Whether a tampering conviction requires proof that the defendant impaired evidence in an investigation by tampering with evidence related to the investigation.”

O'Donnell, J., dissents.

The conflict case is *State v. Skorvanek*, 182 Ohio App.3d 615, 2009-Ohio-1709, 914 N.E.2d 418 (9th Dist.).

**2013-0551. State v. Lawson.**

Franklin App. No. 12AP-53, 2012-Ohio-5250. On motion for delayed appeal. Motion denied.

Pfeifer and Lanzinger, JJ., dissent.

**2013-0559. State v. Smith.**

Portage App. No. 2012-P-0076, 2013-Ohio-640. On motion for stay of court of appeals' judgment. Motion denied.

O'Connor, C.J., and O'Donnell and O'Neill, JJ., dissent.

**2013-0583. State v. Hightower.**

Lucas App. Nos. L-11-1138, L-11-1139, L-11-1140, L-11-1141, L-11-1142, and L-11-1143, 2012-Ohio-6248. On motion for delayed appeal. Motion denied.

Pfeifer, Kennedy, and O'Neill, JJ., dissent.

**2013-0592. State v. Kemp.**

Cuyahoga App. No. 97913, 2013-Ohio-167. On motion for delayed appeal. Motion denied.

Pfeifer, Kennedy, and O'Neill, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2013-0109. State v. White.**

Lucas App. No. L-10-1194, 2013-Ohio-51.

O'Connor, C.J., would accept the appeal on Proposition of Law Nos. I and IV only.

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

French, J., would not accept Proposition of Law No. II.

**2013-0323. Adae v. State.**

Franklin App. No. 12AP-406, 2013-Ohio-23.

Pfeifer, J., dissents.

French, J., not participating.

**2013-0351. State v. Tolliver.**

Montgomery App. No. 24716, 2013-Ohio-115.

Pfeifer and O'Neill, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2012-0036. State v. Jones.**

Summit App. No. 25695, 2011-Ohio-6063.

O'Neill, J., dissents.

**2013-0198. Moran v. Mercy St. Vincent Med. Ctr.**

Lucas App. No. L-11-1281, 2013-Ohio-203. Discretionary appeal not accepted. Renewed motion to stay enforcement of judgment pending appeal denied.

O'Neill, J., would grant the renewed motion to stay enforcement of judgment pending appeal.

**2013-0288. State v. Jackson.**

Cuyahoga App. No. 98157, 2012-Ohio-5885.

**2013-0307. State v. Allen.**

Lake App. No. 2011-L-157, 2013-Ohio-434.

O'Donnell, J., dissents.

Kennedy and French, JJ., dissent and would accept the appeal on Proposition of Law No. I.

**2013-0317. George v. R. Good Logistics, L.L.C.**

Preble App. Nos. CA2012-06-008, CA2012-06-009, and CA2012-06-010, 2013-Ohio-16.

Pfeifer and O'Neill, JJ., dissent.

O'Donnell, J., dissents and would accept the appeal and hold the cause for the decision in 2012-0535, *Cullen v. State Farm Mut. Auto. Ins. Co.*, 8th Dist. No. 95925, 2011-Ohio-6621.

**2013-0321. State v. Simmons.**

Jefferson App. No. 06 JE 4, 2013-Ohio-1013.

**2013-0328. Utterback Dental Group, Inc. v. Lucido.**

Stark App. No. 2011-CA-285, 2013-Ohio-76.

**2013-0333. State v. Kimbo.**

Lorain App. No. 13CA010337.

**2013-0340. Schulze v. Grandstaff.**

Lake App. No. 2012-L-040, 2012-Ohio-5934.

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

**2013-0342. State v. Widmer.**

Warren App. No. CA2012-02-008, 2013-Ohio-62.

Lanzinger and O'Neill, JJ., dissent.

**2013-0343. State v. Nichols.**

Adams App. No. 12CA955, 2013-Ohio-308.

O'Neill, J., dissents.

**2013-0344. State v. Senu-Oke.**

Franklin App. No. 12AP-658, 2013-Ohio-83.

**2013-0359. State v. Pellegrini.**

Allen App. No. 1-12-30, 2013-Ohio-141.

**2013-0360. MacDonald v. Auto-Owners Ins. Co.**

Allen App. No. 1-12-25, 2012-Ohio-5949.

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

**2013-0361. State v. Hunley.**

Lucas App. Nos. L-11-1066 and L-11-1068, 2013-Ohio-129.

O'Neill, J., dissents.

**2013-0362. Todd v. Cleveland.**

Cuyahoga App. No. 98333, 2013-Ohio-101.

Kennedy, J., dissents.

**2013-0365. Haselman v. Rittner.**

Fulton App. No. F-12-017.

**2013-0366. State v. Holmes.**

Coshocton App. No. 2012CA0017.

**2013-0368. In re Estate of Luoma.**

Lake App. No. 2012-L-046, 2013-Ohio-148.

**2013-0369. Smiley v. Professional Staff Mgt., Inc.**

Van Wert App. No. 15-12-12, 2013-Ohio-139.

Pfeifer, J., dissents.

**2013-0373. State v. Duncan.**

Hamilton App. No. C-120324, 2013-Ohio-381.

Lanzinger, J., dissents.

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

**2013-0374. Snyder v. Manuel.**

Hancock App. No. 5-11-39, 2012-Ohio-5951.

O'Donnell, J., dissents.

**2013-0388. State v. Phillips.**

Van Wert App. No. 15-12-02, 2012-Ohio-5950.

O'Connor, C.J., dissents and would accept the appeal on Proposition of Law Nos. I and III.

**2013-0392. State v. Brody.**

Lake App. Nos. 2012-L-050, 2012-L-051, and 2012-L-052, 2013-Ohio-340.

**2013-0397. Wells Fargo Bank, N.A. v. Hazel.**

Franklin App. No. 11AP-1061, 2012-Ohio-5770.

**2013-0404. Davis v. Davis.**

Geauga App. No. 2011-G-3018, 2013-Ohio-211.

**2013-0415. Linetsky v. DeJohn.**

Cuyahoga App. No. 98370, 2012-Ohio-6140. Discretionary appeal not accepted. Motion to stay pending appeal and to continue supersedeas bond denied as moot.

**2013-0417. Watterson v. Burnard.**

Lucas App. No. L-12-1012, 2013-Ohio-316.

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

French, J., dissents.

**2013-0429. State ex rel. DeWine v. Helms.**

Summit App. No. 26472, 2013-Ohio-359.

**2013-0446. State v. Jenkins.**

Highland App. No. 12CA10, 2013-Ohio-595.

**2013-0450. Kuhlman v. Findlay.**

Hancock App. No. 5-12-21, 2013-Ohio-645.

O'Neill, J., dissents.

**2013-0479. State v. Clark.**

Clark App. No. 2012 CA 16, 2013-Ohio-299.

Lanzinger, J., dissents.

**2013-0491. Citimortgage, Inc. v. Byrd.**

Franklin App. No. 12AP-973.



**2013-0499. State v. Jackson.**

Summit App. No. 26509, 2013-Ohio-783.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

**RECONSIDERATION OF PRIOR DECISIONS**

**2012-2173. King v. King.**

Medina App. Nos. 11CA0006-M, 11CA0023-M, and 11CA0069-M, 2012-Ohio-5219. Reported at 134 Ohio St.3d 1507, 2013-Ohio-1123, 984 N.E.2d 1101. On motion for reconsideration of Christopher D. King. Motion denied. On motions to dismiss of Elizabeth A. King and Christopher D. King. Motions denied as moot.

**2012-2188. Bank One Trust Co., N.A. v. Scherer.**

Franklin App. No. 11AP-1140, 2012-Ohio-5302. Reported at 134 Ohio St.3d 1508, 2013-Ohio-1123, 984 N.E.2d 1102. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

**2013-0021. Hayward v. Summa Health Sys.**

Summit App. No. 25938, 2012-Ohio-5396. Reported at 134 Ohio St.3d 1507, 2013-Ohio-1123, 984 N.E.2d 1101. On motion for reconsideration of Proposition of Law No. II. Motion denied.

O'Neill, J., dissents.

**2013-0030. Litchfield Twp. Bd. of Trustees v. Nimer.**

Medina App. No. 11CA0037-M, 2012-Ohio-5431. Reported at \_\_\_ Ohio St.3d \_\_\_, 2013-Ohio-1123, 984 N.E.2d 1102. On motion for reconsideration. Motion denied.

**2013-0057. State v. Gilbert.**

Franklin App. No. 12AP-142, 2012-Ohio-5521. Reported at \_\_\_ Ohio St.3d \_\_\_, 2013-Ohio-1123, 984 N.E.2d 1102. On motion for reconsideration. Motion denied.

O'Neill, J., dissents.

**2013-0082. State ex rel. Jackson v. Bunting.**

In Mandamus. Reported at 134 Ohio St.3d 1505, 2013-Ohio-1123, 984 N.E.2d 1100. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

**2013-0090. State ex rel. Evans v. Marshall.**

In Mandamus and Procedendo. Reported at \_\_\_ Ohio St.3d \_\_\_, 2013-Ohio-1123, 984 N.E.2d 1100. On motion for reconsideration. Motion denied. Motion to clarify facts and designation of parties denied as moot.

**2013-0122. State v. Paige.**

Cuyahoga App. No. 97939, 2012-Ohio-5727. Reported at 134 Ohio St.3d 1509, 2013-Ohio-1123, 984 N.E.2d 1102. On motion for reconsideration. Motion denied.

Lanzinger and O'Neill, JJ., dissent.

**2013-0197. JP Morgan Chase v. Brown.**

Hamilton App. No. C-120676. Reported at \_\_\_ Ohio St.3d \_\_\_, 2013-Ohio-1054, 984 N.E.2d 1099. On motion for reconsideration. Motion denied. On motion for relief from entry of dismissal of case. Motion denied.

**2013-0460. Perry v. Williams.**

Hamilton App. No. C-120120. Reported at 135 Ohio St.3d 1403, 2013-Ohio-1322, 985 N.E.2d 514. On motion for reconsideration. Motion denied.