

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

October 8, 2014

[Cite as *10/08/2014 Case Announcements*, 2014-Ohio-4414.]

MERIT DECISIONS WITH OPINIONS

2013-0304. Bank of Am., N.A. v. Kuchta, Slip Opinion No. 2014-Ohio-4275.

Medina App. No. 12CA0025-M, 2012-Ohio-5562. Certified question answered in the negative. Judgment of the court of appeals reversed and judgment of the trial court reinstated.

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

Pfeifer and O'Neill, JJ., dissent.

2013-1006. Kohl's Illinois, Inc. v. Marion Cty. Bd. of Revision, Slip Opinion No. 2014-Ohio-4353.

Board of Tax Appeals, No. 2011-A-2747. Decision vacated and cause remanded to the Board of Tax Appeals.

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

MERIT DECISIONS WITHOUT OPINIONS

2014-1098. Jenkins v. State.

Franklin App. No. 12AP-726, 2013-Ohio-5536. On consideration of the jurisdictional memoranda filed in this case, the court accepts the appeal, and this cause is reversed on the authority of *Mansaray v. State*, 138 Ohio St.3d 277, 2014-Ohio-750, 6 n.e.3D 35

O'Donnell, Kennedy, and French, JJ., would accept the appeal and remand the cause of application of *Mansaray*.

2014-1256. State ex rel. Chappell v. Morgan.

In Mandamus. On relator's motion to seal complaint for writ of mandamus and affidavit in support and all other documents and exhibits that may be filed in this action, it ordered by the court that the motion is denied.

On respondent's suggestion of lack of subject-matter jurisdiction and pursuant to S.Ct.Prac.R. 12.04, it is ordered by the court that the cause is dismissed.

O'Neill, J., dissents and would grant an alternative writ.

MOTION AND PROCEDURAL RULINGS

2009-0739. State v. Wesson.

Summit C.P. No. CR2008030710. On application for reopening under S.Ct.Prac.R. 11.06. Application denied.

Pfeifer, Acting C.J.

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

2012-2182. In re Mercantile Customer Pilot Program.

Public Utilities Commission, No. 10-834-EL-POR. On motion to dismiss. Motion granted. Cause dismissed.

Pfeifer, J., dissents.

2013-0513. In re Application of Ohio Edison Co.

Public Utilities Commission, No. 12-1230-EL-SSO. On motion of Northeast Ohio Public Energy Council to expedite oral argument and opinion. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

2014-0235. Hillenmeyer v. Cleveland Bd. of Rev.

Board of Tax Appeals, No. 2009-3688. On appellees' motion to strike the new issue raised for the first time in appellant's reply brief claiming facial discrimination against interstate commerce, it is ordered by the court that the motion is denied. Appellant's first merit brief substantially states the basis for the argument, and "there is no clear line between" a claim of facial discrimination against, and a claim of undue burden upon, interstate commerce. *See Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 298, 117 S.Ct. 811, 136 L.Ed.2d 761 (1997), fn. 12, citing *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986).

O'Connor, C.J., would hold the motion to strike in abeyance and issue an order requiring Hillenmeyer to show cause why the entire Commerce Clause argument should not be stricken.

O'Donnell, J., dissents.

2014-0244. State ex rel. Schiffbauer v. Banaszak.

In Mandamus. On motion of Attorney General Michael DeWine for leave to file an amicus memorandum supporting relator's opposition to respondents' motion to dismiss, is it ordered by the court that the motion is granted.

2014-0292. Saturday v. Cleveland Bd. of Rev.

Board of Tax Appeals, No. 2011-4027. On appellees' motion to strike the new issue of facial discrimination against interstate commerce raised for the first time in appellants' reply brief, it is ordered by the court that the motion is denied upon the specific grounds set forth in the motion, and for the same reasons set forth in the court's order entered this day in No. 2014-0235, *Hillenmeyer v. Cleveland Bd. of Rev.*

O'Connor, C.J., would hold the motion to strike in abeyance and issue an order requiring appellants to show cause why the entire Commerce-Clause argument should not be stricken.

O'Donnell, J., dissents.

2014-1434. State v. Guiley.

Stark App. No. 2013CA00211, 2014-Ohio-2035. On motion for delayed appeal. Motion denied.

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

2014-1435. State v. Kacmarik.

Cuyahoga App. No. 100177, 2014-Ohio-2264. On motion for delayed appeal. Motion denied.

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

2014-1436. State v. Greathouse.

Montgomery App. No. 26053. On motion for delayed appeal. Motion denied.

Pfeifer, J., dissents.

2014-1454. State v. Earley.

Cuyahoga App. No. 100482, 2014-Ohio-2643. 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' entry filed August 13, 2014:

“When the offense of operating a motor vehicle while under the influence in violation of R.C. 4511.19(A)(1) is the predicate conduct for aggravated vehicular assault in violation [of] R.C. 2903.08(A)(1), are the two offenses allied, and if so, does R.C. 2929.41(B)(3) create an exception that allows a trial court to impose a sentence for both offenses?”

Sua sponte, cause consolidated with No. 2014-1278, *State v. Earley*, Cuyahoga App. No. 100482, 2014-Ohio-2643.

The conflict cases are *State v. West*, 2d Dist. Montgomery No. 23547, 2010-Ohio-1786, *State v. Mendoza*, 6th Dist. Wood No. WD-10-008, 2012-Ohio-5988, and *State v. Phelps*, 12th Dist. Butler No. CA2009-09-243, 2010-Ohio-3257.

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

2014-1459. State v. Curley.

Summit App. No. 27360. On motion for delayed appeal. Motion granted.

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

2014-1476. State v. Queer.

Ashland App. No. 12-COA-041, 2013-Ohio-3585. On motion for delayed appeal. Motion denied.

2014-1483. State v. Harvey.

Licking App. No. 13-CA-109, 2014-Ohio-2683. On motion for delayed appeal. Motion denied.

Pfeifer and O'Neill, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2014-0978. Boone Coleman Constr., Inc. v. Piketon.

Pike App. No. 13CA836, 2014-Ohio-2377.

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

2014-1055. Griffith v. Aultman Hosp.

Stark App. No. 2013CA00142, 2014-Ohio-1218.

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

2014-1255. State v. Shaffer.

Medina App. Nos. 12CA0071-M and 12CA0077-M, 2014-Ohio-2461. Discretionary appeal accepted and cause held for the decision in No. 2014-0563,

State v. South, Summit App. No. 26967, 2014-Ohio-374; and briefing schedule stayed.

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

2014-1278. State v. Earley.

Cuyahoga App. No. 100482, 2014-Ohio-2643. Discretionary appeal accepted; sua sponte, cause consolidated with No. 2014-1454, *State v. Earley*, Cuyahoga App. No. 100482, 2014-Ohio-2643.

O'Donnell, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2014-0811. State v. Charlton.

Lorain App. No. 12CA010206, 2014-Ohio-1330.

O'Neill, J., dissents.

2014-0871. State v. Qunnie.

Cuyahoga App. No. 100317, 2014-Ohio-1435.

2014-1001. State v. Boscarino.

Montgomery App. No. 25580, 2014-Ohio-1858.

2014-1014. State v. Russell.

Montgomery App. No. 25467.

2014-1016. State v. D'Agostino.

Lorain App. No. 12CA010304, 2014-Ohio-551.

2014-1017. Fox v. Fox.

Clermont App. No. CA2013-08-066, 2014-Ohio-1887.

Kennedy, J., dissents.

2014-1020. Marron v. Marron.

Warren App. Nos. CA2013-11-109 and CA2013-11-113, 2014-Ohio-2121. Discretionary appeal and cross-appeal not accepted.

2014-1024. State v. Frederick.

Franklin App. No. 13AP-630, 2014-Ohio-1960.

2014-1030. State v. Hoover.

Seneca App. No. 13-13-47, 2014-Ohio-1881.

2014-1034. Auflick v. Healthcare Industries Corp.

Athens App. No. 13CA47.

2014-1037. State v. Brookshire.

Montgomery App. No. 25853, 2014-Ohio-1971.

O'Neill, J., dissents.

2014-1038. State v. Smith.

Franklin App. No. 13AP-592, 2014-Ohio-712.

O'Neill, J., dissents.

2014-1039. State v. Quinn.

Lucas App. No. L-12-1242, 2014-Ohio-340.

2014-1040. State v. Phillips.

Hamilton App. No. C-130340.

2014-1042. State v. Rabe.

Clermont App. No. CA2013-09-068, 2014-Ohio-2008.

2014-1047. State v. Beerman.

Hamilton App. No. C-130675.

2014-1050. State v. Johnson.

Trumbull App. No. 2013-T-0121, 2014-Ohio-2015.

O'Neill, J., dissents.

2014-1053. Churchill v. Hoffman.

Wood App. No. WD-13-082, 2014-Ohio-1987.

O'Donnell, J., dissents.

2014-1054. State v. Newton.

Franklin App. No. 13AP-500, 2014-Ohio-1958.

2014-1061. State v. Owens.

Cuyahoga App. Nos. 100398 and 100399, 2014-Ohio-2275.

2014-1064. State v. Taylor.

Lorain App. Nos. 13CA010366, 13CA010367, 13CA010368, and 13CA010369,
2014-Ohio-2001.

O’Neill, J., dissents.

2014-1066. Whitetail Orchard, L.L.C. v. Anadell.

Erie App. No. E-13-064, 2014-Ohio-2110.

Pfeifer and Kennedy, JJ., dissent.

2014-1069. Hoover v. Elyria.

Lorain App. No. 13CA010364, 2014-Ohio-2227.

O’Donnell, J., dissents.

2014-1070. Huntington Natl. Bank v. Patino.

Medina App. No. 13CA0061-M, 2014-Ohio-2000.

2014-1072. State v. Slane.

Franklin App. No. 13AP-728, 2014-Ohio-1962.

2014-1073. State v. Klinkner.

Franklin App. No. 13AP-595, 2014-Ohio-2022.

2014-1077. State v. Lane.

Geauga App. No. 2013-G-3144, 2014-Ohio-2010.

O’Neill, J., dissents.

2014-1080. State v. Howard.

Cuyahoga App. No. 100094, 2014-Ohio-2176.

2014-1093. State v. Elliott.

Cuyahoga App. No. 100404, 2014-Ohio-2062.

2014-1096. Cottrill v. Noah’s Transp., L.L.C.

Miami App. No. 2014-CA-2, 2014-Ohio-2098.

2014-1097. State v. Jones.

Lorain App. No. 12CA010262, 2014-Ohio-2228.

2014-1099. State v. Salser.

Franklin App. No. 12AP-792, 2014-Ohio-87.

O'Donnell, J., dissents.

2014-1100. State v. Holley.

Franklin App. No. 14AP-134.

O'Donnell, J., dissents.

2014-1103. State v. George.

Cuyahoga App. No. 100113, 2014-Ohio-2177.

2014-1104. State v. Powell.

Cuyahoga App. No. 99386, 2014-Ohio-2048.

2014-1105. Banks v. Heritage Property Group, L.L.C.

Clermont App. No. CA2013-10-078, 2014-Ohio-991.

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

2014-1108. State v. Golden.

Franklin App. No. 13AP-927, 2014-Ohio-2148.

2014-1112. In re Guardianship of Smith.

Butler App. No. CA2013-09-165, 2014-Ohio-2119.

O'Donnell and Kennedy, JJ., dissent.

2014-1113. State v. Cullins.

Montgomery App. No. 25476, 2014-Ohio-2202.

2014-1116. State v. Hargrove.

Franklin App. No. 13AP-615, 2014-Ohio-1919.

French, J., dissents and would accept the appeal and hold the cause for the decision in No. 2013-1441, *State v. Ruff*, 1st Dist. Hamilton Nos. C-120533 and C-120534, 2013-Ohio-3234.

2014-1117. Caruso v. Lenghan.

Cuyahoga App. No. 99582, 2014-Ohio-1824.

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

Kennedy, J., dissents.

2014-1120. State v. Wiles.

Butler App. No. CA2013-09-177.

2014-1121. State v. Whitacker.

Wood App. No. WD-13-061, 2014-Ohio-2220.

O'Connor, C.J., dissents.

2014-1124. State v. Cox.

Montgomery App. No. 25907, 2014-Ohio-2201.

2014-1125. Kurtock v. Cleveland Bd. of Zoning Appeals.

Cuyahoga App. No. 100266, 2014-Ohio-1836.

Kennedy and O'Neill, JJ., dissent.

2014-1142. State v. Penny.

Stark App. No. 2013CA00245, 2014-Ohio-2293.

Kennedy, J., dissents.

2014-1146. State v. Woods.

Stark App. No. 2013CA00176, 2014-Ohio-2375.

2014-1148. State v. Stazzon.

Medina App. No. 14CA0040-M.

2014-1152. State v. Hughes.

Morrow App. Nos. 12CA0004 and 12CA0005, 2014-Ohio-2328.

2014-1166. State v. Perkins.

Montgomery App. No. 25808, 2014-Ohio-1863.

2014-1167. State v. Caldwell.

Richland App. No. 13CA99, 2014-Ohio-2416.

2014-1185. State v. V.J.

Franklin App. No. 13AP-799, 2014-Ohio-2618.

2014-1187. State v. Lenhart.

Cuyahoga App. No. 99993, 2014-Ohio-2260.

O'Donnell, J., dissents.

2014-1199. State v. Butler.

Richland App. No. 14CA01, 2014-Ohio-2758.

2014-1213. Bickerstaff v. Ohio Dept. of Rehab. & Corr.

Franklin App. Nos. 13AP-1028 and 13AP-1029, 2014-Ohio-2364.

2014-1215. State v. Schwarzman.

Cuyahoga App. No. 100337, 2014-Ohio-2393.

O'Donnell, J., dissents.

2014-1229. State v. Greer.

Summit App. No. 26996, 2014-Ohio-2370.

2014-1232. Mays v. Toledo Hosp.

Lucas App. No. L-13-1260, 2014-Ohio-2562.

2014-1233. Lawton v. Howard.

Franklin App. No. 13AP-878, 2014-Ohio-2660.

2014-1234. State v. Heckman.

Stark App. No. 2014CA00085. Discretionary appeal not accepted. Appellant's petition for writ of habeas corpus and appellee's motion to dismiss are denied as moot.

2014-1237. Ohio Am. Health Care, Inc., v. Ohio Bd. of Nursing.

Franklin App. Nos. 13AP-1020 and 13AP-1021, 2014-Ohio-2422.

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

2014-1239. State v. Elson.

Franklin App. No. 13AP-554, 2014-Ohio-2498.

2014-1242. State v. Brown.

Hamilton App. No. C-130517.

2014-1244. State v. Morgan.

Butler App. Nos. CA2013-08-146 and CA2013-08-147, 2014-Ohio-2472.

O'Donnell, J., dissents.

2014-1246. State v. Castro.

Cuyahoga App. No. 100379, 2014-Ohio-2398.

O'Neill, J., dissents.

2014-1250. State v. Ball.

Franklin App. No. 13AP-1030, 2014-Ohio-2662.

2014-1252. State v. Elder.

Lake App. No. 2013-L-128, 2014-Ohio-2567.

2014-1257. State v. Rivera.

Lucas App. No. L-13-1177, 2014-Ohio-2690.

2014-1262. State v. Harris.

Franklin App. No. 13AP-770, 2014-Ohio-2501.

2014-1277. Yeager v. Moody.

Carroll App. No. 13 CA 884, 2014-Ohio-2931.

2014-1324. State v. Johnson.

Montgomery App. No. 13449.

2014-1341. State v. Nelson.

Montgomery App. No. 25026.

2014-1432. State v. Knowles.

Franklin App. No. 10AP-119, 2011-Ohio-4477.

French, J., not participating.

RECONSIDERATION OF PRIOR DECISIONS

2010-1105. State v. Osie.

Butler C.P. No. CR 2009-02-0302. Reported at 140 Ohio St.3d 131, 2014-Ohio-2966, 16 N.E.3d 588. On motion for reconsideration. Motion denied.

Lanzinger, J., dissents and would grant reconsideration as to Proposition of Law No. III.