

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	Nos. 06AP-870 and 06AP-899
Christopher Swann,	:	(C.P.C. No. 05CR-09-6331)
Defendant-Appellant.	:	(REGULAR CALENDAR)

O P I N I O N

Rendered on December 31, 2008

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Dianne Worthington, for appellant.

ON REMAND FROM THE SUPREME COURT OF OHIO.

TYACK, J.

{¶1} This matter is before the court upon remand from the Supreme Court of Ohio. *State v. Swann*, 119 Ohio St.3d 552, 2008-Ohio-4837. The purpose of the remand is for this court to determine whether the trial court abused its discretion by finding insufficient corroborating evidence to support the trustworthiness of a third-party's statements against penal interest. Evid.R. 804(B)(3).

{¶2} For the reasons set forth in Judge Brown's concurrence, *State v. Swann*, 171 Ohio App.3d 304, 2007-Ohio-2010, at ¶35, and for the reasons set forth in Justice Stratton's concurrence, *State v. Swann*, 119 Ohio St.3d 552, 2008-Ohio-4837, at ¶34-43, we hold that the trial court abused its discretion in concluding that the evidence proffered by Christopher Swann was insufficient to confirm the trustworthiness of the third-party's confession.

{¶3} Accordingly, we sustain Swann's first assignment of error. We vacate the judgment of the Franklin County Court of Common Pleas and remand the case for retrial in accordance with this opinion.

*Judgment vacated and
cause remanded for retrial.*

BROWN, J., concurs.
SADLER, J., dissents.

SADLER, J., dissenting.

{¶4} For the reasons stated in my separate opinion when this case was initially before us, I do not believe the trial court abused its discretion in finding that there was insufficient corroborating evidence supporting Delmar Carlisle's alleged confession. See *State v. Swann*, 171 Ohio App.3d 304, 2007-Ohio-2010, 870 N.E.2d 754, at ¶44-49 (Sadler, J., concurring in part and dissenting in part). According, I respectfully dissent.
