



THE SUPREME COURT *of* OHIO
SELECTED OPINION SUMMARIES
2008

THE SUPREME COURT *of* OHIO 2008



Paul E. Pfeifer • Chief Justice Thomas J. Moyer • Evelyn Lundberg Stratton
Seated (left to right)

Judith Ann Lanzinger • Maureen O'Connor • Terrence O'Donnell • Robert R. Cupp
Standing (left to right)



THE SUPREME COURT *of* OHIO

SELECTED OPINION SUMMARIES 2008

THOMAS J. MOYER

CHIEF JUSTICE

PAUL E. PFEIFER

EVELYN LUNDBERG STRATTON

MAUREEN O'CONNOR

TERRENCE O'DONNELL

JUDITH ANN LANZINGER

ROBERT R. CUPP

JUSTICES

STEVEN C. HOLLON

ADMINISTRATIVE DIRECTOR



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JANUARY

State v. Davis

Case no. 2005-1656

Web cite 2008-Ohio-2

SUMMARY: Upholds the conviction and death sentence of Roland Davis for the July 2000 aggravated murder of 86-year-old Elizabeth Sheeler in her Newark apartment.

Licking C.P. No. 04 CR 464. Judgment affirmed.

Lundberg Stratton, **O'Connor**, O'Donnell, and Lanzinger, JJ., concur.

Moyer, C.J., and Pfeifer and Cupp, JJ., concur in part and dissent in part.

State v. Johnson

Case no. 2006-2154

Web cite 2008-Ohio-69

SUMMARY: Rules that a law requiring prison terms for certain crimes does not require consecutive sentences.

Butler App. No. CA2005-10-422, 2006-Ohio-5195. Judgment reversed and sentence vacated, and cause remanded to the trial court for resentencing.

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

Todd Dev. Co., Inc. v. Morgan

Case no. 2007-0041

Web cite 2008-Ohio-87

SYLLABUS: A plaintiff or counterclaimant moving for summary judgment does not bear the initial burden of addressing the nonmoving party's affirmative defenses.

Warren App. No. CA2005-11-124, 2006-Ohio-4825. The certified question is answered in the negative, and the judgment of the court of appeals is reversed.

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

Lanzinger, J., concurs in judgment only.

Pfeifer, J., dissents and would answer the certified question in the affirmative and affirm the judgment of the court of appeals.

SELECTED OPINION SUMMARIES 2008

This document contains a chronological compilation of the syllabi and summaries of the merit decisions with opinions decided by the Supreme Court of Ohio in 2008 that were summarized by the Office of Public Information. Lawyer and judicial discipline cases are not included.

The full text of these and all 2008 opinions is available online at supremecourt.ohio.gov.

Majority opinion authors are indicated in boldface.

The abbreviation, "C.J.," stands for "Chief Justice," while "JJ." stands for "Justices."

Please note that the Office of Public Information did not prepare any opinion summaries during the month of November.

WCI, Inc. v. Ohio Liquor Control Comm.

Case no. 2006-1360

Web cite 2008-Ohio-88

SYLLABUS: The Ohio Liquor Control Commission does not have authority under R.C. 4301.25(A)(1) to suspend or revoke a permit holder's liquor permit when a former employee of the permit holder is convicted of a felony for an act committed while employed by the permit holder.

Franklin App. No. 05AP-896, 2006-Ohio-2751. Judgment affirmed.

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

Mendenhall v. Akron

Case no. 2006-2265

Web cite 2008-Ohio-270

SYLLABUS: An Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.

U.S. District Court for the Northern District of Ohio, Eastern Division, Certifying State Law Questions, Nos. 5:06 CV 0139 and 5:06 CV 0154. Certified question answered in the affirmative.

Moyer, C.J., and Lundberg Stratton, McFarland, Klatt, **Lanzinger**, and Cupp, JJ., concur.

Pfeifer, J., concurs in the answer only.

Matthew W. McFarland, J., of the 4th Appellate District, sitting for O'Connor, J.

William A. Klatt, J., of the 10th Appellate District, sitting for O'Donnell, J.

Reagans v. MountainHigh Coachworks Inc.

Case no. 2006-0489

Web cite 2008-Ohio-271

SYLLABUS: (1) The notice that is mandated by Section 433.2, Title 16, C.F.R., to appear in a consumer credit contract limits a consumer's recovery from the creditor to the amount the consumer actually paid under the contract. (2) Section 433.2, Title 16, C.F.R., does not entitle a buyer to set off against its outstanding loan balance its judgment against the seller for treble damages and attorney fees under the Ohio Consumer Sales Practices Act, R.C. 1345.09(B)(2) and (F)(2).

Miami App. No. 05-CA-12, 2006-Ohio-423. Judgment affirmed.

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

FEBRUARY

Stevens v. Radey

Case no. 2006-2343

Web cite 2008-Ohio-291

SYLLABUS: Unless a testator manifests a contrary intent in a will, the preference for the immediate vesting of estates requires interests to be assigned at the testator's death, not held in abeyance until a future uncertain date.

Cuyahoga App. Nos. 87273 and 87274, 2006-Ohio-5579. Judgment reversed.

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

Al Minor & Assoc. Inc. v. Martin

Case nos. 2006-2340 & 2007-0121

Web cite 2008-Ohio-292

SYLLABUS: (1) Information that constitutes a trade secret pursuant to R.C. 1333.61(D) does not lose its character as a trade secret if it has been memorized. (2) The Uniform

Trade Secrets Act does not apply to the use of memorized information that is not a trade secret pursuant to R.C. 1333.61 (D).

Franklin App. No. 06AP-217, 2006-Ohio-5948. Judgment affirmed.

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

Pruszynski v. Reeves

Case no. 2006-2072

Web cite 2008-Ohio-510

SYLLABUS: (1) Prior to the ruling on the merits of a motion for prejudgment interest pursuant to R.C. 1343.03(C), a trial court must set a date certain for an evidentiary hearing. (2) The trial court has the discretion to determine the nature of the evidentiary hearing to be held, as it is in the best position to select the kind of evidence necessary to make the findings required by R.C. 1343.03(C) and determine whether an award of prejudgment interest is proper.

Geauga App. No. 2005-G-2612, 2006-Ohio-5190. Judgment reversed and cause remanded.

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

Lanzinger, J., concurs in part and dissents in part.

State v. Sarkozy

Case no. 2006-1973

Web cite 2008-Ohio-509

SYLLABUS: (1) If a trial court fails during a plea colloquy to advise a defendant that the sentence will include a mandatory term of postrelease control, the defendant may dispute the knowing, intelligent, and voluntary nature of the plea either by filing a motion to withdraw the plea or upon direct appeal. (2) If the trial court fails during the plea colloquy to advise a defendant that the sentence will include a mandatory term of postrelease control, the

court fails to comply with Crim.R. 11, and the reviewing court must vacate the plea and remand the cause.

Cuyahoga App. No. 86952, 2006-Ohio-3977. Judgment reversed and cause remanded.

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

Lanzinger and Cupp, JJ., concur in part and dissent in part.

Columbia Gas Transm. Corp. v. Levin

Case no. 2006-1443

Web cite 2008-Ohio-511

SUMMARY: Reverses the Board of Tax Appeals finding that Columbia Gas Transmission Corporation is a natural gas company under R.C. 5727.01 (D) (4) for the purpose of taxing the personal property of a public utility. Instead, because Columbia is primarily engaged in the interstate transportation of natural gas, it is a pipeline company under R.C. 5727.01 (D) (5), and its personal property is subject to the 88-percent pipeline-company assessment rate under R.C. 5727.111 (D).

Board of Tax Appeals, No. 2003-K-1876. Decision reversed.

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

Pfeifer and O'Connor, JJ., concur in judgment only.

Hyle v. Porter

Case no. 2006-2187

Web cite 2008-Ohio-542

SYLLABUS: Because R.C. 2950.031 was not expressly made retrospective, it does not apply to an offender who bought his home and committed his offense before the effective date of the statute.

Hamilton App. No. C-050768, 170 Ohio App.3d 710, 2006-Ohio-5454. Certified question answered in the negative and

judgment reversed.

Moyer, C.J., and Pfeifer, Lundberg Stratton, Lanzinger, and Cupp, JJ., concur.

O'Connor, J., concurs in judgment only.
O'Donnell, J., dissents.

State v. Schlee

Case no. 2006-1608

Web cite 2008-Ohio-545

SYLLABUS: The trial court may recast an appellant's motion for relief from judgment as a petition for postconviction relief when the motion has been unambiguously presented as a Civ.R. 60(B) motion.

Lake App. No. 2005-L-105, 2006-Ohio-3208. Certified question answered in the affirmative and judgment affirmed. Moyer, C.J., and Pfeifer, O'Connor, O'Donnell, and Lanzinger, JJ., concur. Lundberg Stratton and Cupp, JJ., concur in judgment only.

Groch v. Gen. Motors Corp.

Case no. 2006-1914

Web cite 2008-Ohio-546

SYLLABUS: (1) R.C. 4123.93 and 4123.931 do not violate the Takings Clause (Section 19, Article I), the Due Process and Remedies Clauses (Section 16, Article I), or the Equal Protection Clause (Section 2, Article I) of the Ohio Constitution, and are therefore facially constitutional. (2) R.C. 2305.10(C) and former 2305.10(F) do not violate the open-courts provision (Section 16, Article I), the Takings Clause (Section 19, Article I), the Due Process and Remedies Clauses (Section 16, Article I), the Equal Protection Clause (Section 2, Article I), or the one-subject rule (Section 15(D), Article II) of the Ohio Constitution, and are therefore facially constitutional. (3) To the extent that former R.C. 2305.10(F) (now (G)) affects an accrued substantive right by providing an unreasonably short period of time in which to file suit for certain plaintiffs whose

injuries occurred before the amendments to R.C. 2305.10 enacted by 2004 Am.Sub.S.B. No. 80 became effective, and whose causes of action therefore accrued for purposes of R.C. 2305.10(C), former R.C. 2305.10(F) is unconstitutionally retroactive under Section 28, Article II of the Ohio Constitution.

On Order from the U.S. District Court, Northern District of Ohio, Western Division, Certifying Questions of State Law, No. 3:06-CV-1604. Certified questions answered. See opinion. Moyer, C.J., and Lundberg Stratton, O'Connor and Cupp, JJ., concur. O'Donnell, J., concurs in the answers to the certified questions only. Lanzinger, J., concurs in the answers to the certified questions and concurs in the opinion in part. Pfeifer, J., concurs in part and dissents in part.

MARCH

State v. Fugate

Case no. 2006-2289

Web cite 2008-Ohio-856

SYLLABUS: When a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term.

Franklin App. No. 06AP-298, 2006-Ohio-5748. Judgment reversed and cause remanded. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Borkowski v. Abood

Case no. 2006-1913

Web cite 2008-Ohio-857

SYLLABUS: (1) When a judge acts in an official capacity and has personal and subject-matter jurisdiction over a

controversy, the judge is exempt from civil liability, even if the judge goes beyond, or exceeds, the judge's authority and acts in excess of jurisdiction. Civil liability attaches only if the judge acts in an absence of all jurisdiction. (*Wilson v. Neu* (1984), 12 Ohio St.3d 102, 12 OBR 147, 465 N.E.2d 854, followed.) (2) In the interval between the filing of a notice of removal and a federal court's remand of the proceedings, a state trial court is divested of jurisdiction. This interval is equivalent to an absence of jurisdiction as to part of the proceedings. Actions taken by a judge in this interval are in excess of jurisdiction, and immunity from civil liability applies.

Lucas App. No. L-05-1425, 169 Ohio App.3d 31, 2006-Ohio-4913.

Judgment reversed.

Per curiam. Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur. Pfeifer, J., concurs in judgment only.

State v. Fulmer

Case no. 2007-0265

Web cite 2008-Ohio-936

SYLLABUS: In cases in which a defendant asserts the functional equivalent of a diminished-capacity defense, the trial court should instruct the jury to disregard the evidence used to support that defense unless the defendant can demonstrate that the evidence is relevant and probative for purposes other than a diminished-capacity defense. (*State v. Wilcox* (1982), 70 Ohio St.2d 182, 24 O.O.3d 284, 436 N.E.2d 523, applied.)

Lake App. No. 2005-L-137, 2006-Ohio-7015. Judgment reversed and cause remanded.

Moyer, C.J., and **O'Connor**, O'Donnell, Lanzinger, and Cupp, JJ., concur. Pfeifer and Lundberg Stratton, JJ., dissent and would dismiss the appeal as having been improvidently accepted.

Episcopal School of Cincinnati v. Levin

Case no. 2007-0126

Web cite 2008-Ohio-939

SYLLABUS: A "prospective use" exemption from real property taxation should be granted if, as of the January 1 lien date of the tax year, the applicant has acquired the property with the intention of devoting it to an exempt use, so long as the applicant has not devoted the property to any nonexempt or commercial use as of the tax lien date.

Board of Tax Appeals, No. 2004-R-230. Decision affirmed.

Pfeifer, **Lundberg Stratton**, O'Connor, O'Donnell, and Cupp, JJ., concur. Moyer, C.J., concurs in judgment only. Lanzinger, J., dissents.

Elyria v. Lorain Cty. Budget Comm.

Case nos. 2006-2293, 2006-2389 & 2006-2390

Web cite 2008-Ohio-940

SYLLABUS: (1) R.C. 5747.55 applies to an appeal taken from budget commission orders that allocate funds based on an alternative method of apportionment. (2) An appeal to the Board of Tax Appeals from an apportionment by a budget commission must strictly comply with R.C. 5747.55(C) (3).

Board of Tax Appeals, Nos. 2003-T-1533, 2004-T-1166, and 2005-T-1301. Decisions reversed and causes remanded.

Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur. Lanzinger, J., concurs in judgment only.

Jackson v. Columbus

Case no. 2006-2096

Web cite 2008-Ohio-1041

SUMMARY: In a defamation suit filed against the city of Columbus and various officials, reverses court of appeals decision that affirmed summary judgment in favor of city and former public safety director, holding

that summary judgment is inappropriate.

Franklin App. No. 05AP-1035, 2006-Ohio-5209. Judgment reversed and cause remanded.

Pfeifer, O'Connor, Lanzinger, and Cupp, JJ., concur.

Moyer, C.J., and Lundberg Stratton and O'Donnell, JJ., dissent.

Talik v. Fed. Marine Terminals, Inc.

Case no. 2006-1808

Web cite 2008-Ohio-937

SYLLABUS: The Longshore and Harbor Workers' Compensation Act, Section 901 et seq., Title 33, U.S.Code, preempts a claim under Ohio law alleging that the claimant's employer caused an injury through an intentional act committed with the belief that injury was "substantially certain" to occur.

Cuyahoga App. No. 87073, 172 Ohio App.3d 704, 2006-Ohio-3979. Judgment reversed and cause remanded.

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

Pfeifer and Vukovich, JJ., concur in part and dissent in part.

Joseph J. Vukovich, J., of the 7th Appellate District, sitting for O'Connor, J.

State v. Simpkins

Case no. 2007-0052

Web cite 2008-Ohio-1197

SYLLABUS: In cases in which a defendant is convicted of, or pleads guilty to, an offense for which postrelease control is required but not properly included in the sentence, the sentence is void, and the state is entitled to a new sentencing hearing to have postrelease control imposed on the defendant unless the defendant has completed his sentence.

Cuyahoga App. No. 87692, 2006-Ohio-6028. Judgment affirmed.

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

Lanzinger, J., dissents.

State v. Smith

Case no. 2007-0268

Web cite 2008-Ohio-1260

SYLLABUS: (1) In determining whether an offense is a lesser included offense of another when a statute sets forth mutually exclusive ways of committing the greater offense, a court is required to apply the second part of the test established in *State v. Deem* (1988), 40 Ohio St.3d 205, 533 N.E.2d 294, paragraph three of the syllabus, to each alternative method of committing the greater offense. (2) Theft, as defined in R.C. 2913.02, is a lesser included offense of robbery, as defined in R.C. 2911.02.

Hamilton App. No. C-060077, 2006-Ohio-6980. Judgment affirmed.

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

Pfeifer, J., dissents.

State ex rel. Am. Legion Post 25

v. Ohio Civ. Rights Comm.

Case no. 2006-2263

Web cite 2008-Ohio-1261

SYLLABUS: (1) R.C. 4112.04(B) creates a clear legal duty for the Ohio Civil Rights Commission to issue a subpoena at a respondent's request during a preliminary investigation of an administrative complaint. (2) The administrative rule that authorizes issuance of a subpoena by the Ohio Civil Rights Commission only after a complaint is filed — Ohio Adm.Code 4112-3-13(B) — is invalid because it conflicts with R.C. 4112.04(B).

Fayette App. No. CA2006-01-006, 171 Ohio App.3d 476, 2006-Ohio-5509.

Judgment affirmed.

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

Minster Farmers Coop. Exchange Co., Inc.
v. Meyer

Case nos. 2006-1061 & 2006-1069

Web cite 2008-Ohio-1259

SUMMARY: Holds that notations on invoices and account statements setting forth an interest rate do not constitute a "written contract" for purposes of R.C. 1343.03(A).

Shelby App. Nos. 17-05-32,
2006-Ohio-1886, and 17-05-28,
2006-Ohio-1887. Judgments reversed
and causes remanded.

Moyer, C.J., and **Pfeifer**, O'Connor,
O'Donnell, Lanzinger, and Bryant, JJ.,
concur.

Lundberg Stratton, J., concurs in
judgment only.

Peggy L. Bryant, J., of the 10th Appellate
District, sitting for Cupp, J.

APRIL

State v. Fairbanks

Case no. 2006-1529

Web cite 2008-Ohio-1470

SYLLABUS: A conviction for failure to comply with an order or signal of a police officer, R.C. 2921.331(B), combined with the additional specification that the offender's operation of the motor vehicle caused a substantial risk of serious physical harm to persons or property, R.C. 2921.331(C)(5)(a)(ii), is not barred by a prior conviction for reckless operation, R.C. 4511.20, arising out of the same incident.

Ross App. No. 05CA2870,
2006-Ohio-3530. Judgment reversed.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, and **Cupp**, JJ.,
concur.

Pfeifer and Lanzinger, JJ., dissent.

State v. Cabrales

Case nos. 2007-0595 & 2007-0651

Web cite 2008-Ohio-1625

SYLLABUS: (1) In determining whether offenses are allied offenses of similar import under R.C. 2941.25(A), courts are required to compare the elements of offenses in the abstract without considering the evidence in the case, but are not required to find an exact alignment of the elements. Instead, if, in comparing the elements of the offenses in the abstract, the offenses are so similar that the commission of one offense will necessarily result in commission of the other, then the offenses are allied offenses of similar import. (*State v. Rance* (1999), 85 Ohio St.3d 632, 710 N.E.2d 699, clarified.)

(2) Trafficking in a controlled substance under R.C. 2925.03(A)(2) and possession of that same controlled substance under R.C. 2925.11(A) are allied offenses of similar import under R.C. 2941.25(A), because commission of the first offense necessarily results in commission of the second.

Hamilton App. No. C-050682,
2007-Ohio-857. Certified question
answered in the affirmative and
judgment affirmed.

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

Fain, J., concurs in judgment.

Mike Fain, J., of the 2nd Appellate
District, sitting for Lanzinger, J.

State v. Colon

Case nos. 2006-2139 & 2006-2250

Web cite 2008-Ohio-1624

SYLLABUS: When an indictment fails to charge a mens rea element of a crime and the defendant fails to raise that defect in the trial court, the defendant has not waived the defect in the indictment.

Cuyahoga App. No. 87499, 2006-Ohio-
5335. Certified question answered in
the negative and judgment reversed.

Moyer, C.J., and Pfeifer, O'Connor, and Wolff, JJ., concur.
Lundberg Stratton, O'Donnell, and Lanzinger, JJ., dissent.
William H. Wolff Jr., J., of the 2nd Appellate District, sitting for Cupp, J.

State v. White

Case no. 2006-0295

Web cite 2008-Ohio-1623

SUMMARY: Vacates the death sentence of Clifton White III of Akron and remands the case to the Summit County Court of Common Pleas for resentencing. White was convicted of aggravated murder in the December 1995 shooting death of Deborah Thorpe.

Summit App. No. 22591,
2005-Ohio-6990. Judgment reversed.
Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Toole, O'Donnell, Lanzinger, and **Cupp, JJ.**, concur.
Colleen Mary O'Toole, J., of the 11th Appellate District, sitting for O'Connor, J.

State ex rel. Cincinnati Enquirer v. Jones-Kelley

Case no. 2006-2239

Web cite 2008-Ohio-1770

SYLLABUS: (1) Federal and state law except from disclosure information concerning individuals assisted under the state foster-care plan and public-assistance recipients, but absent evidence showing that a list of the names and addresses of certified foster caregivers discloses which, if any, of those caregivers is a public-assistance recipient, the list is not excepted from disclosure under federal and state law. (Section 671(a)(8), Title 42, U.S.Code, Section 205.50, Title 45, C.F.R., and R.C. 5101.27(A), construed.) (2) Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability

of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception. (*State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶30, followed.) (3) A judicially created "good sense" rule does not except a public record from disclosure under R.C. 149.43. (*State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, ¶30-39, followed; *State ex rel. Keller v. Cox* (1999), 85 Ohio St.3d 279, 707 N.E.2d 931, and *State ex rel. McCleary v. Roberts* (2000), 88 Ohio St.3d 365, 725 N.E.2d 1144, clarified.)

In Mandamus. Writ granted.

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

O'Connor, J., concurs in judgment only.

State v. Blackburn

Case no. 2007-0519

Web cite 2008-Ohio-1823

SYLLABUS: In calculating the time within which a criminal defendant must be brought to trial under R.C. 2945.71, periods of delay resulting from motions filed by the defendant in a previous case also apply in a subsequent case in which there are different charges based on the same underlying facts and circumstances of the previous case.

Ashtabula App. No. 2006-A-0029,
2007-Ohio-1071. Judgment reversed and cause remanded.

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

Pfeifer and Lanzinger, JJ., dissent.

MAY

State v. Bates

Case nos. 2007-0293 & 2007-0304

Web cite 2008-Ohio-1983

SUMMARY: Holds that a trial court has the authority to order a prison sentence be served consecutively to a prison sentence previously imposed on the same offender by another Ohio court.

Miami App. No. 06-CA-08,
2006-Ohio-7086. Judgment affirmed.
Moyer, C.J., and Pfeifer, Lundberg
Stratton, O'Connor, O'Donnell,
Lanzinger, and **Cupp, JJ.**, concur.

State v. Warren

Case no. 2006-2148

Web cite 2008-Ohio-2011

SUMMARY: Determines that due process is not violated when the defendant receives a mandatory term of life imprisonment for the forcible rape of a victim under age 13 when the defendant was 15 years of age at the time of the offense but not prosecuted until he had passed the age of 21.

Cuyahoga App. No. 86854, 168 Ohio
App.3d 288, 2006-Ohio-4104. Judgment
affirmed.
Moyer, C.J., and **O'Connor** and Cupp,
JJ., concur.
Lundberg Stratton, O'Donnell, and
Lanzinger, JJ., concur in judgment only.
Pfeifer, J., dissents.

Cristino v. Ohio Bur. of Workers' Comp.

Case no. 2007-0152

Web cite 2008-Ohio-2013

SYLLABUS: A claim against the state for money due under a contract is not a claim of equitable restitution and must be brought in the Ohio Court of Claims.

Cuyahoga App. No. 87567,
2006-Ohio-5921. Judgment reversed.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, Lanzinger, and

Cupp, JJ., concur.

Pfeifer, J., concurs separately.

Shoemaker v. Gindlesberger

Case no. 2007-0113

Web cite 2008-Ohio-2012

SYLLABUS: A beneficiary of a decedent's will may not maintain a negligence action against an attorney for the preparation of a deed that results in increased tax liability for the estate. (*Simon v. Zipperstein* (1987), 32 Ohio St.3d 74, 512 N.E.2d 636, approved and followed.)

Holmes App. No. 05 CA 010,
2006-Ohio-6916. Judgment affirmed.
O'Connor, O'Donnell, **Lanzinger**, and
Cupp, JJ., concur.
Moyer, C.J., and Pfeifer and Lundberg
Stratton, JJ., concur separately.

Turner v. Ohio Bell Tel. Co.

Case nos. 2007-0035 & 2007-0112

Web cite 2008-Ohio-2010

SYLLABUS: When a vehicle collides with a utility pole located off the improved portion of the roadway, but within the right-of-way, a public utility is not liable, as a matter of law, if the utility has obtained any necessary permission to install the pole and the pole does not interfere with the usual and ordinary course of travel.

Cuyahoga App. No. 87541,
2006-Ohio-6168. Judgment affirmed
in part and reversed in part.
Moyer, C.J., and Lundberg Stratton,
O'Connor, **Lanzinger**, and Cupp, JJ.,
concur.
Pfeifer and O'Donnell, JJ., dissent.

Klein v. Moutz

Case no. 2007-1551

Web cite 2008-Ohio-2329

SYLLABUS: Both trial and appellate courts have authority to determine and tax costs under R.C. 5321.16(C) for attorney fees incurred at the appellate level.

Summit App. No. 23473,
2007-Ohio-3242. Certified question
answered and judgment reversed and
cause remanded.
Moyer, C.J., and Pfeifer, **Lundberg
Stratton**, O'Connor, O'Donnell, and
Cupp, JJ., concur.
Lanzinger, J., concurs in judgment only.

Rogers v. Dayton

Case nos. 2007-0549 & 2007-0684
Web cite 2008-Ohio-2336
SYLLABUS: A political subdivision is self-
insured for purposes of former R.C.
3937.18(K) (3) if it qualifies as a self-insurer
under R.C. Chapter 4509, although it is
not required to obtain a certificate of self-
insurance.

Montgomery App. No. 21593,
2007-Ohio-673. Certified question
answered in the affirmative and
judgment reversed.
Pfeifer, **Lundberg Stratton**, O'Connor,
and O'Donnell, JJ., concur.
Moyer, C.J., and Lanzinger and Cupp,
JJ., dissent.

State v. Hairston

Case no. 2007-0394
Web cite 2008-Ohio-2338
SYLLABUS: Where none of the individual
sentences imposed on an offender are
grossly disproportionate to their respective
offenses, an aggregate prison term resulting
from consecutive imposition of those
sentences does not constitute cruel and
unusual punishment.

Franklin App. No. 06AP-420, 2007-Ohio-
143. Judgment affirmed.
Moyer, C.J., and Lundberg Stratton,
O'Connor, **O'Donnell**, and Cupp, JJ.,
concur.
Pfeifer and Lanzinger, JJ., concur
separately.

Cleveland Constr., Inc. v. Cincinnati

Case no. 2007-0114
Web cite 2008-Ohio-2337
SYLLABUS: No property interest is created
when a city properly exercises its discretion
and does not award a contract to a party
deemed not to have complied with the
requirements of the invitation to bid.

Hamilton App. No. C-050749, C-050779,
and C-050888, 2006-Ohio-6452.

Judgment reversed.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, **Lanzinger**, and
Cupp, JJ., concur.
Pfeifer, J., dissents and would affirm the
judgment of the court of appeals.

Polaris Amphitheater Concerts, Inc.

v. Delaware Cty. Bd. of Revision
Case no. 2007-0347
Web cite 2008-Ohio-2454
SUMMARY: Clarifies that parties seeking
Supreme Court review of Board of Tax
Appeals decisions must set forth the error
in a properly filed notice of appeal pursuant
to R.C. 5717.04.

Board of Tax Appeals, No. 2004-V-1294.
Decision reversed and cause remanded.
Moyer, C.J., and **Pfeifer**, Lundberg
Stratton, O'Connor, O'Donnell,
Lanzinger, and Cupp, JJ., concur.

JUNE

*Rankin v. Cuyahoga Cty. Dept.
of Children & Family Servs.*

Case no. 2007-0306
Web cite 2008-Ohio-2567
SYLLABUS: A political subdivision is not
liable for damages in a civil action for
injury, death, or loss to person or property
allegedly caused by any act or omission in
connection with its operation of a public
children services agency except as provided
in R.C. 2744.02(B). (R.C. 2744.02(A) and
(B), applied.)

Cuyahoga App. No. 86620,
2006-Ohio-6759. Judgment affirmed
in part and reversed in part.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, Lanzinger, and
Cupp, JJ., concur.
Pfeifer, J., dissents.

O'Toole v. Denihan

Case no. 2007-0056

Web cite 2008-Ohio-2574

SYLLABUS: (1) A public children services agency and its employees, upon receipt of a case referral, do not have a duty under R.C. 2151.421(A)(1)(a) to cross-report the case to a law-enforcement agency and are immune from liability for failing to do so. (2) Because R.C. 2919.22(A) does not expressly impose liability on a political subdivision and its employees, immunity applies. (3) Recklessness is a perverse disregard of a known risk. Recklessness, therefore, necessarily requires something more than mere negligence. The actor must be conscious that his conduct will in all probability result in injury.

Cuyahoga App. No. 87476,
2006-Ohio-6022. Judgment
reversed and cause remanded.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, Lanzinger, and
Cupp, JJ., concur.
Pfeifer, J., concurs in part and dissents
in part.

Kraynak

v. Youngstown City School Dist. Bd. of Edn.

Case no. 2007-0740

Web cite 2008-Ohio-2618

SYLLABUS: Pursuant to former R.C.
2151.421, in determining whether a
person knows of or suspects child abuse
for purposes of reporting it to the proper
authorities, the standard is subjective.

Mahoning App. No. 05 MA 200,
172 Ohio App.3d 545, 2007-Ohio-

1236. Judgment reversed and cause
remanded.

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

Albrecht v. Treon

Case no. 2007-0507

Web cite 2008-Ohio-2617

SYLLABUS: The next of kin of a decedent
upon whom an autopsy has been performed
do not have a protected right under Ohio
law in the decedent's tissues, organs, blood,
or other body parts that have been removed
and retained by the coroner for forensic
examination and testing.

On Order from the U.S. District Court
for the Southern District of Ohio,
Western Division, Certifying Question
of State Law, No. 1:06CV274. Certified
question answered. See opinion.

Lundberg Stratton, O'Connor,
O'Donnell, Lanzinger, and Cupp, JJ.,
concur.

Moyer, C.J., concurs in answer only.
Pfeifer, J., dissents.

State v. Were

Case no. 2006-1578

Web cite 2008-Ohio-2762

SUMMARY: Upholds the conviction and
death sentence of James Were for the
aggravated murder of Corrections Officer
Robert Vallandingham during a 1993
prisoner uprising at the Southern Ohio
Correctional Facility in Lucasville.

Hamilton App. No. C-030485,
2006-Ohio-3511. Judgment affirmed.

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

Howard v. Miami Twp. Fire Div.

Case no. 2007-0873

Web cite 2008-Ohio-2792

SUMMARY: Holds that an accumulation of ice on a roadway is not an “obstruction” within the meaning of R.C. 2744.02(B)(3).

Montgomery App. No. 21478, 171 Ohio App.3d 184, 2007-Ohio-1508. Judgment of the court of appeals reversed and judgment of the trial court reinstated. Lundberg Stratton, **O’Connor**, O’Donnell, Lanzinger, and Cupp, JJ., concur.

Moyer, C.J., and Pfeifer, J., dissent.

State v. Gardner

Case no. 2007-0375

Web cite 2008-Ohio-2787

SUMMARY: Reverses a 2nd District Court of Appeals decision vacating the conviction of Reginald Gardner Jr. for aggravated burglary.

Montgomery App. No. 21357, 2007-Ohio-182. Judgment reversed and cause remanded. Lundberg Stratton, **O’Connor**, and Cupp, JJ., concur.

O’Donnell, J., concurs in judgment only.

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

Paterek v. Petersen & Ibold

Case no. 2006-1811

Web cite 2008-Ohio-2790

SUMMARY: Holds that in an attorney-malpractice case, proof of the collectibility of the judgment lost due to the malpractice is an element of the plaintiff’s claim against the negligent attorney.

Geauga App. No. 2005-G-2624, 2006-Ohio-4179. Judgment reversed and cause remanded.

Moyer, C.J., and **Pfeifer**, Lundberg

Stratton, Brogan, Lanzinger, and JJ., concur.

O’Connor and Cupp, JJ., concur in part and dissent in part.

James A. Brogan, J., of the 2nd Appellate District, sitting for O’Donnell, J.

JULY

Dworning v. Euclid

Case no. 2007-0307

Web cite 2008-Ohio-3318

SYLLABUS: A public employee alleging employment discrimination in violation of R.C. Chapter 4112 need not exhaust the administrative remedy of appeal to a civil service commission before pursuing the civil action allowed in R.C. 4112.99.

Cuyahoga App. No. 87757, 2006-Ohio-6772. Judgment affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O’Connor, O’Donnell, **Lanzinger**, and Cupp, JJ., concur.

Ohio Civ. Rights Comm.

v. Akron Metro. Hous. Auth.

Case no. 2007-0254

Web cite 2008-Ohio-3320

SYLLABUS: A landlord may not be held liable under R.C. 4112.02(H)(4) for failing to take corrective action against a tenant whose racial harassment of another tenant created a hostile housing environment.

Summit App. Nos. 23056 and 23060, 170 Ohio App.3d 283, 2006-Ohio-6967. Judgment reversed.

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

State v. Baker

Case no. 2007-1184

Web cite 2008-Ohio-3330

SYLLABUS: A judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the

jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. (Crim.R. 32(C), explained.)

Summit App. No. 23713. Certified question answered, judgment reversed, and cause remanded.

Pfeifer, Lundberg Stratton, **Lanzinger**, and Cupp, JJ., concur.

O'Donnell, J., concurs separately.

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

Hageman v. Southwest Gen. Health Ctr.

Case no. 2007-0376

Web cite 2008-Ohio-3343

SYLLABUS: An attorney may be liable to an opposing party for the unauthorized disclosure of that party's medical information that was obtained through litigation.

Cuyahoga App. No. 87826, 2006-Ohio-6765. Judgment affirmed and cause remanded.

Moyer, C.J., and Pfeifer and Lanzinger, JJ., concur.

O'Connor and Cupp, JJ., concur in the syllabus and judgment.

Lundberg Stratton and O'Donnell, JJ., dissent.

Barnes v. Univ. Hosps. of Cleveland

Case no. 2007-0140

Web cite 2008-Ohio-3344

SYLLABUS: (1) A retired judge who was never elected, but who served as a judge by appointment of the governor, is eligible to receive civil referrals and serve as a private judge pursuant to R.C. 2701.10. (2) A court reviewing an award of punitive damages for excessiveness must independently analyze (1) the degree of reprehensibility of the party's conduct, (2) the ratio of the punitive damages to the actual harm inflicted by the party, and (3) sanctions for comparable conduct. (*BMW of N. Am., Inc. v. Gore*

(1996), 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809, applied.)

Cuyahoga App. Nos. 87247, 87285, 87710, 87903, and 87946, 2006-Ohio-6266. Judgment affirmed in part and reversed in part, and cause remanded.

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

Pfeifer, J., concurs in part and dissents in part.

Lundberg Stratton and O'Donnell, JJ., dissent.

State v. Hale

Case no. 2005-1678

Web cite 2008-Ohio-3426

SUMMARY: Upholds the conviction and death sentence of Delano Hale Jr. of Cleveland for the June 2004 shooting death of Douglas Green.

Cuyahoga C.P. No. CR-04-454857-A. Judgment affirmed. See opinion.

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

AUGUST

Evanich v. Bridge

Case no. 2007-0863

Web cite 2008-Ohio-3820

SYLLABUS: In a claim for adverse possession, the intent to possess another's property is objective rather than subjective, and the legal requirement that possession be adverse is satisfied by clear and convincing evidence that for 21 years the claimant possessed property and treated it as the claimant's own. (*Yetzer v. Thoman* (1866), 17 Ohio St. 130, followed.)

Lorain App. No. 05CA008824, 170 Ohio App.3d 653, 2007-Ohio-1349. Judgment affirmed.

Moyer, C.J., and Pfeifer, Lundberg

Stratton, O'Connor, O'Donnell,
Lanzinger, and Cupp, JJ., concur.

Marc Glassman, Inc. v. Levin

Case no. 2007-0328

Web cite 2008-Ohio-3819

SUMMARY: Affirms 8th District's conclusion that a pharmacy's contract with third parties for insurance information does not constitute purchase of "electronic information services" subject to sales and use tax pursuant to R.C. 5741.02(A)(1), 5741.01(M), 5739.01(X) and 5739.01(B)(3) (e).

Cuyahoga App. No. 87766,
2006-Ohio-6591. Judgment affirmed.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, and Lanzinger,
JJ., concur.
Pfeifer and Cupp, JJ., dissent.

State v. Roberts

Case no. 2007-1475

Web cite 2008-Ohio-3835

SYLLABUS: When a defendant's sentence is stayed on appeal, but the defendant is released from prison under the assumption that the sentence has been served, the defendant has no expectation of finality in that sentence for the purposes of the Double Jeopardy Clause.

Hamilton App. No. C-060675.
Judgment affirmed.
Moyer, C.J., and **Lundberg Stratton**,
O'Connor, O'Donnell, Lanzinger, and
Cupp, JJ., concur.
Pfeifer, J., concurs in judgment only.

State v. Silsby

Case no. 2007-1254

Web cite 2008-Ohio-3834

SYLLABUS: For a criminal action to be "pending on direct review" for purposes of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, the criminal action must have been filed in the court at the

time we announced *Foster* and must have been awaiting an action or a decision at the time of our decision in *Foster*.

Geauga App. No. 2006-G-2725,
2007-Ohio-2308. Certified questions
answered and judgment affirmed.
Moyer, C.J., and Pfeifer, O'Connor,
O'Donnell, Lanzinger, and Cupp, JJ.,
concur.

Lundberg Stratton, J., concurs in part
and dissents in part.

Environmental Network Corp.

v. Goodman Weiss Miller, L.L.P.

Case no. 2007-0739

Web cite 2008-Ohio-3833

SYLLABUS: When a plaintiff premises a legal-malpractice claim on the theory that he would have received a better outcome if his attorney had tried the underlying matter to conclusion rather than settled it, the plaintiff must establish that he would have prevailed in the underlying matter and that the outcome would have been better than the outcome provided by the settlement. *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 674 N.E.2d 1164, clarified.

Cuyahoga App. No. 87782,
2007-Ohio-831. Judgment reversed
and cause remanded.
Moyer, C.J., and Lundberg Stratton,
O'Connor, Lanzinger, and Cupp, JJ.,
concur.
O'Donnell, J., concurs in judgment
only.
Pfeifer, J., dissents.

State v. Jeffries

Case no. 2007-1478

Web cite 2008-Ohio-3865

SYLLABUS: Statements that were not made in the course of plea discussions are not protected by Evid.R. 410, even if the statements were later provided to the state in the course of plea discussions.

Lake App. No. 2005-L-057,
2007-Ohio-3366. Judgment reversed.
Moyer, C.J., and Pfeifer, Lundberg
Stratton, O'Connor, O'Donnell,
Lanzinger, and Cupp, JJ., concur.

Nadra v. Mbah

Case no. 2007-0525

Web cite 2008-Ohio-3918

SYLLABUS: R.C. 2305.10 is Ohio's general statute of limitations for personal injury and thus is applicable to claims under Section 1983, Title 42, U.S. Code filed in state court. (*Owens v. Okure* (1989), 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594, construed and applied.)

Franklin App. No. 06AP-829,
2007-Ohio-501. Judgment reversed.
Moyer, C.J., and **Lundberg Stratton**,
O'Connor, O'Donnell, and Cupp, JJ.,
concur.
Pfeifer and Lanzinger, JJ., dissent.

VIL Laser Sys., L.L.C. v. Shiloh Industries, Inc.

Case no. 2007-0996

Web cite 2008-Ohio-3920

SYLLABUS: An order allowing a plaintiff a period of time in which to choose between remittitur and a new trial on damages is not a final, appealable order.

Shelby App. No. 17-07-02. Judgment reversed and cause remanded.
Moyer, C.J., and Lundberg Stratton,
O'Connor, O'Donnell, and **Lanzinger**,
JJ., concur.
Pfeifer and Cupp, JJ., dissent.

SEPTEMBER

State v. Mays

Case no. 2007-1302

Web cite 2008-Ohio-4539

SYLLABUS: A traffic stop is constitutionally valid when a law-enforcement officer witnesses a motorist drift over the lane markings in violation of R.C. 4511.33,

even without further evidence of erratic or unsafe driving.

Licking App. No. 2006-CA-00097,
2007-Ohio-2807. Certified question answered in the affirmative and judgment affirmed.

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

Anthony O. Calabrese Jr., J., of the 8th Appellate District, sitting for Cupp, J.

Maynard v. Eaton Corp.

Case no. 2007-1069

Web cite 2008-Ohio-4542

SYLLABUS: (1) The amendment to R.C. 1343.03(A), pursuant to 2004 Sub.H.B. No. 212 ("H.B. 212"), 150 Ohio Laws, Part III, 3417 (effective June 2, 2004), applies to cases in which the trial court has entered final judgment prior to June 2, 2004, but the judgment is not yet paid in full and the case was pending on appeal as of that date. (2) In calculating postjudgment interest for a case that is pending as of June 2, 2004, the fixed rate in effect prior to June 2, 2004, applies through June 1, 2004, and is to be used to calculate the amount of interest accrued through June 1, 2004; the annually determined rate then applies and is used to calculate the amount of interest to be paid from June 2, 2004, forward.

Marion App. No. 9-06-33, 2007-Ohio-1906. Certified question answered in the affirmative and judgment reversed.
Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell,
Lanzinger, and **Cupp, JJ.**, concur.

State v. Davis

Case no. 2007-1039

Web cite 2008-Ohio-4537

SYLLABUS: Crim.R. 7(D) does not permit the amendment of an indictment when the

amendment changes the penalty or degree of the charged offense; amending the indictment to change the penalty or degree changes the identity of the offense.

Highland App. No. 06CA26,
2007-Ohio-2249. Judgment affirmed.

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

Cupp, J., concurs in judgment only.

Lundberg Stratton and O'Donnell, JJ., dissent.

In re C.T.

Case no. 2008-0073

Web cite 2008-Ohio-4570

SYLLABUS: A guardian ad litem has authority under R.C. 2151.281(I) and 2151.415(F) to file and prosecute a motion to terminate parental rights and award permanent custody in a child welfare case.

Crawford App. No. 3-07-20, 174 Ohio App.3d 594, 2007-Ohio-6970. Judgment reversed and cause remanded.

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

Hutchings v. Childress

Case nos. 2006-1703 & 2006-2183

Web cite 2008-Ohio-4568

SUMMARY: Holds that part of an injured spouse's damages against a defendant can include the fair market value of home health care provided by the uninjured spouse; damages are measured not by the lost income of the supporting spouse, but by the market value of the services he or she renders.

Delaware App. No. 05CAE05-031,
2006-Ohio-7323. Certified question answered and judgment affirmed.

Moyer, C.J., and **Pfeifer**, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Lundberg Stratton, J., concurs in part and dissents in part.

O'Connor, J., dissents and would dismiss the cause as having been improvidently accepted.

Ohioans For Concealed Carry, Inc. v. Clyde
Case no. 2007-0960

Web cite 2008-Ohio-4605

SUMMARY: Finds that a Clyde city ordinance prohibiting licensed handgun owners from carrying concealed handguns in city parks is an exercise of the municipality's police power that conflicts with a general law and is, therefore, unconstitutional.

Sandusky App. Nos. S-06-039 and S-06-040, 2007-Ohio-1733. Judgment affirmed.

Lundberg Stratton, O'Connor, **O'Donnell**, and Cupp, JJ., concur.

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

State ex rel. Glasgow v. Jones

Case no. 2007-1411

Web cite 2008-Ohio-4788

SUMMARY: Denies a writ of mandamus to compel a state representative to provide copies of e-mail messages, text messages, and correspondence she sent or received over a general period of time in her official capacity as a representative of the Ohio General Assembly.

In Mandamus. Writ denied.

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

In re Andrew

Case no. 2007-0728

Web cite 2008-Ohio-4791

SYLLABUS: When a juvenile court is exercising jurisdiction over a person adjudicated a delinquent child pursuant to the matter for which the person was adjudicated delinquent, the person adjudicated delinquent shall be treated as a

child until he reaches the age of 21.
Hamilton App. No. C-060226, 2007-Ohio-1021. Judgment reversed and cause remanded to the juvenile court.
Pfeifer, Lundberg Stratton, O'Donnell, and Lanzinger, JJ., concur.
Moyer, C.J., and O'Connor and Cupp, JJ., dissent.

Dombroski v. WellPoint, Inc.

Case no. 2007-2162

Web cite 2008-Ohio-4827

SYLLABUS: To fulfill the second prong of the *Belvedere* test for piercing the corporate veil, the plaintiff must demonstrate that the defendant shareholder exercised control over the corporation in such a manner as to commit fraud, an illegal act, or a similarly unlawful act. (*Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.* (1993), 67 Ohio St.3d 274, 617 N.E.2d 1075, modified.)

Belmont App. No. 06-BE-60, 173 Ohio App.3d 508, 2007-Ohio-5054. Certified question answered in the negative and judgment reversed.

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

Bartchy v. State Bd. of Edn.

Case no. 2007-0411

Web cite 2008-Ohio-4826

SYLLABUS: R.C. 3311.06 does not prevent residents who seek to transfer property from one school district to another from pursuing the transfer under R.C. 3311.24 when the property was the subject of a prior annexation proceeding.

Franklin App. No. 06AP-697, 170 Ohio App.3d 349, 2007-Ohio-300. Judgment reversed and judgment of the trial court reinstated.

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

Lanzinger, J., concurs in syllabus and judgment only.
Pfeifer, O'Donnell, and Cupp, JJ., dissent.

OCTOBER

State v. Ferguson

Case no. 2007-1427

Web cite 2008-Ohio-4824

SUMMARY: The 2003 Sex Offender Registration and Notification Law does not violate the Ex Post Facto Clause of the U.S. Constitution or the prohibitions in the Ohio Constitution against retroactive laws.

Cuyahoga App. No. 88450, 2007-Ohio-2777. Judgment affirmed.
Moyer, C.J., and **O'Connor**, O'Donnell, and Cupp, JJ., concur.
Pfeifer, Lundberg Stratton, and Lanzinger, JJ., dissent.

State v. Swann

Case no. 2007-1046

Web cite 2008-Ohio-4837

SYLLABUS: The corroboration requirement of Evid.R. 804(B)(3) rationally serves a legitimate interest in the admission of trustworthy evidence, and therefore exclusion of a criminal defendant's proffered evidence for lack of corroboration does not deprive a defendant of the right to present a complete defense.

Franklin App. Nos. 06AP-870 and 06AP-899, 171 Ohio App.3d 304, 2007-Ohio-2010. Judgment reversed and cause remanded.
Moyer, C.J., and O'Connor, **O'Donnell**, and Cupp, JJ., concur.
Pfeifer, Lundberg Stratton, and Lanzinger, JJ., concur in part and dissent in part.

In re Guardianship of Santrucek

Case no. 2007-1545

Web cite 2008-Ohio-4915

SYLLABUS: A person who has not filed an application to be appointed guardian, or who otherwise has not been made a party to the guardianship proceedings, has no standing to appeal.

Licking App. No. 06CA130, 2007-Ohio-3427. Judgment affirmed. Moyer, C.J., and O'Connor, O'Donnell, and **Lanzinger, JJ.**, concur. Pfeifer, Lundberg Stratton, and Cupp, JJ., dissent.

McFadden v. Cleveland State Univ.

Case no. 2007-0705

Web cite 2008-Ohio-4914

SYLLABUS: (1) En banc proceedings do not violate Section 3(A), Article IV, of the Ohio Constitution. (2) Courts of appeals have discretion to determine whether an intradistrict conflict exists; if the judges of a court of appeals determine that two or more decisions of the court on which they sit are in conflict, they must convene en banc to resolve the conflict.

Franklin App. No. 06AP-638, 170 Ohio App.3d 142, 2007-Ohio-939. Judgment reversed and cause remanded. **Moyer, C.J.**, and Pfeifer, Lundberg Stratton, O'Connor, and O'Donnell, JJ., concur. Lanzinger and Cupp, JJ., dissent.

State v. Veney

Case nos. 2007-0656 & 2007-0657

Web cite 2008-Ohio-5200

SYLLABUS: A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond

a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid. (Crim.R. 11(C)(2)(c), applied.)

Franklin App. No. 06AP-523, 2007-Ohio-1295. Certified question answered in the affirmative, and judgment affirmed and cause remanded.

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

In re T.R.

Case no. 2008-0401

Web cite 2008-Ohio-5219

SYLLABUS: R.C. 2151.413(E) does not require a children-services agency that files a motion for permanent custody to update the child's case plan with an adoption plan before the juvenile court grants the motion.

Montgomery App. No. 22291, 2007-Ohio-6593. Certified question answered in the negative and judgment reversed.

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

Ackison v. Anchor Packing Co.

Case nos. 2007-0219 & 2007-0415

Web cite 2008-Ohio-5243

SYLLABUS: The requirements in R.C. 2307.91, 2307.92, and 2307.93 are remedial and procedural and may be applied without offending the Retroactivity Clause of the Ohio Constitution to cases pending on September 2, 2004.

Lawrence App. No. 05CA46, 2006-Ohio-7099. Certified question answered in the affirmative, judgment reversed, and

judgment of the trial court reinstated. Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and **Cupp, JJ.**, concur. Pfeifer, J., dissents.

In re A.J.S.

Case no. 2007-1451

Web cite 2008-Ohio-5307

SYLLABUS: The order of a juvenile court denying a motion for mandatory bindover bars the state from prosecuting a juvenile offender as an adult for a criminal offense. It is therefore the functional equivalent of a dismissal of a criminal indictment and constitutes a final order from which the state may appeal as a matter of right.

Franklin App. No. 06AP-597, 173 Ohio App.3d 171, 2007-Ohio-3216. Judgment affirmed and cause remanded to the trial court.

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

Pfeifer and Lanzinger, JJ., concur in judgment only.

DiCenzo v. A-Best Prods. Co., Inc.

Case no. 2007-1628

Web cite 2008-Ohio-5327

SYLLABUS: (1) An Ohio court decision applies retrospectively unless a party has contract rights or vested rights under the prior decision. (*Peerless Elec. Co. v. Bowers* (1955), 164 Ohio St. 209, 57 O.O. 411,129 N.E.2d 467, followed.) (2) An Ohio court has discretion to apply its decision only prospectively after weighing the following considerations: (1) whether the decision establishes a new principle of law that was not foreshadowed in prior decisions, (2) whether retroactive application of the decision promotes or retards the purpose behind the rule defined in the decision, and (3) whether retroactive application of

the decision causes an inequitable result. (*Chevron Oil Co. v. Huson* (1971), 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296, adopted and applied.)

Cuyahoga App. No. 88583, 2007-Ohio-3270. Judgment reversed and judgment of the trial court reinstated.

Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Moyer, C.J., dissents without opinion. Pfeifer, J., dissents with opinion.

Fletcher v. Univ. Hosps. of Cleveland

Case no. 2007-1529

Web cite 2008-Ohio-5379

SYLLABUS: (1) The proper response to the failure to file the affidavit required by Civ.R. 10(D) (2) is a motion to dismiss pursuant to Civ.R. 12(B) (6). (2) A dismissal of a complaint for failure to file the affidavit required by Civ.R. 10(D) (2) is an adjudication otherwise than on the merits. The dismissal, therefore, is without prejudice.

Cuyahoga App. No. 88573, 2007-Ohio-2778. Judgment reversed and cause remanded to the trial court.

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

O'Donnell, J., concurs in judgment only.

DECEMBER

State ex rel. Jordan v. Indus. Comm.

Case no. 2007-1901

Web cite 2008-Ohio-6137

SUMMARY: Affirms that workers' compensation claimant does not have vested right to full payment for brand name medication.

Franklin App. No. 06AP-908, 2007-Ohio-5157. Judgment affirmed.

Per curiam. Moyer, C.J., and Pfeifer,

Lundberg Stratton, O'Connor,
O'Donnell, Lanzinger, and Cupp, JJ.,
concur.

State ex rel. Toledo Blade Co.

v. Seneca Cty. Bd. of Commrs.

Case no. 2007-1694

Web cite 2008-Ohio-6253

SUMMARY: Grants a writ of mandamus to compel a board of county commissioners to make reasonable efforts to recover, at its expense, requested deleted e-mails sent and received by the commissioners from Jan. 1, 2006, through August 2007, and to make them promptly available for inspection. Denies a writ to compel the board to promptly comply with future public-records requests and denies a request for attorney fees.

In Mandamus. Writ granted in part. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., concurs in judgment only.

State v. Diar

Case no. 2005-2264

Web cite 2008-Ohio-6266

SUMMARY: Unanimously affirms the aggravated murder conviction of Nicole Diar for the 2003 death of her 4-year-old son in their Lorain home; vacates Diar's death sentence and remands the case for a new mitigation hearing.

Lorain C.P. No. 04CR065248. Judgment affirmed in part and reversed in part, and cause remanded.

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

U.S. Bank Natl. Assn. v. Gullotta

Case no. 2007-1144

Web cite 2008-Ohio-6268

SUMMARY: Finds that each missed payment under a promissory note and mortgage

does not yield a new claim such that any successive actions on the same note and mortgage involve different claims and are thus exempt from the "two-dismissal rule" contained in Civ. R. 41(A)(1).

Stark App. No. 2006CA00145, 2007-Ohio-2085. Certified question answered in the negative, and judgment reversed and cause remanded.

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

Lundberg Stratton and O'Donnell, JJ., dissent.

Grundy v. Dhillon

Case no. 2007-1292

Web cite 2008-Ohio-6324

SYLLABUS: (1) To obtain a new trial in a case in which a juror has not disclosed information during voir dire, the moving party must first demonstrate that a juror failed to answer honestly a material question on voir dire and that the moving party was prejudiced by the presence on the trial jury of a juror who failed to disclose material information. To demonstrate prejudice, the moving party must show that an accurate response from the juror would have provided a valid basis for a for-cause challenge. (*Pearson v. Gardner Cartage Co., Inc.* (1947), 148 Ohio St. 425, 36 O.O. 77, 76 N.E.2d 67, paragraph two of the syllabus, and *McDonough Power Equip., Inc. v. Greenwood* (1984), 464 U.S. 548, 104 S.Ct. 845, 78 L.Ed.2d 663, followed.) (2) In determining whether a juror failed to answer honestly a material question on voir dire and whether that nondisclosure provided a basis for a for-cause challenge, an appellate court may not substitute its judgment for the trial court's judgment unless it appears that the trial court's attitude was unreasonable, arbitrary, or unconscionable. (*Pearson v. Gardner Cartage Co., Inc.* (1947), 148 Ohio St. 425, 36 O.O. 77, 76 N.E.2d 67, paragraph two of the

syllabus, followed.)

Trumbull App. No. 2006-T-0007, 2007-Ohio-2693. Judgment reversed and cause remanded to the trial court. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and **Cupp, JJ.**, concur. Lanzinger, J., concurs in judgment only.

State v. Clay

Case nos. 2007-1802 & 2007-1852
Web cite 2008-Ohio-6325

SYLLABUS: For purposes of proving the offense of having a weapon while under a disability pursuant to R.C. 2923.13(A) (3), the mental state of recklessness applies in determining whether the defendant was aware that he or she was "under indictment." (R.C. 2901.21(B), applied.)

Cuyahoga App. No. 88823, 2007-Ohio-4295. Certified question answered in the negative, and judgment reversed and cause remanded to the trial court. Moyer, C.J., and Pfeifer, **Lundberg Stratton**, and Cupp, JJ., concur. Lanzinger, J., concurs separately. O'Connor, J., concurs in judgment only. O'Donnell, J., dissents.

Cheap Escape Co., Inc. v. Haddox, L.L.C.

Case no. 2007-1870
Web cite 2008-Ohio-6323

SYLLABUS: R.C. 1901.18(A) limits municipal court subject-matter jurisdiction to actions or proceedings that have a territorial connection to the court.

Franklin App. No. 06AP-1107, 2007-Ohio-4410. Judgment affirmed. **Moyer**, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Byrd v. Knuckles

Case no. 2007-1913
Web cite 2008-Ohio-6318

SUMMARY: Concludes that parties to a child-support order can agree to modify a child-support arrearage.

Clermont App. No. CA2006-11-095, 2007-Ohio-4541. Judgment reversed and cause remanded to the trial court. Moyer, C.J., and **Pfeifer**, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

In re H.F.

Case nos. 2008-1036 & 2008-1037
Web cite 2008-Ohio-6810

SYLLABUS: An appeal of an adjudication order of abuse, dependency, or neglect and the award of temporary custody pursuant to R.C. 2151.353(A) (2) must be filed within 30 days of the judgment entry pursuant to App.R. 4(A).

Cuyahoga App. Nos. 90299 and 90300, 176 Ohio App.3d 106, 2008-Ohio-1627. Judgment reversed and cause remanded. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, **Lanzinger**, and Cupp, JJ., concur. O'Donnell, J., concurs in judgment only.

Middleburg Hts. v. Quinones

Case no. 2007-1863
Web cite 2008-Ohio-6811

SYLLABUS: (1) Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors, and others are entitled for their services in an action or prosecution, and which the statutes authorize to be taxed and included in the judgment or sentence. (*State ex rel. Franklin Cty. Commrs. v. Guilbert* (1907), 77 Ohio St. 333, 338, 83 N.E. 80, approved and followed.) (2) R.C. 2947.23(A) (1) specifies that *in all*

criminal cases, judges are to include the costs of prosecution in the sentence and render a judgment for such costs. (3) R.C. 1901.26(B) authorizes municipal courts by rule to charge a special-projects fee in addition to all other court costs on the filing of *each criminal cause*. (4) Special projects of the court include, but are not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. (R.C. 1901.26(B) (1).)

Cuyahoga App. No. 88242, 2007-Ohio-3643. Cause remanded to the trial court.

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

Lanzinger, J., concurs in judgment only.

Pfeifer, J., dissents and would affirm the judgment of the court of appeals.







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