

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

May 25, 2011

[Cite as *05/25/2011 Case Announcements, 2011-Ohio-2420.*]

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## MERIT DECISIONS WITHOUT OPINIONS

**2010-1313. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision.**

Board of Tax Appeals, No. 2008-V-253. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

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

Pfeifer and McGee Brown, JJ., dissent.

**2011-0347. [State ex rel.] Hatfield v. Fais.**

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

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

**2011-0354. State ex rel. Huff v. Wright.**

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

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

**2011-0391. HoneyBaked Foods, Inc. v. Affiliated FM Ins. Co.**

Certified Question of State Law, United States District Court, Northern District of Ohio, Western Division, Case No. 3:08CV01686. On review of preliminary memoranda. The court determines that it will not answer the certified question.

This cause is therefore dismissed. Motion for admission pro hac vice of Thomas S. Brown granted.

O'Connor, J., and Lundberg Stratton, O'Donnell, Cupp, and McGee Brown, JJ., concur.

Pfeifer and Lanzinger, JJ., dissent and would answer the certified question.

**2011-0397. [State ex rel.] Sturdivant v. McDonnell.**

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

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

**2011-0399. State ex rel. Lockhart v. Sheeran.**

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

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

**2011-0516. Washington v. Morgan.**

In Habeas Corpus. On petition for writ of habeas corpus of Jimmie L. Washington. Sua sponte, cause dismissed.

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

**2011-0547. Selby v. Sheldon.**

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

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

**2011-0572. Harsh v. Knab.**

In Habeas Corpus. On petition for writ of habeas corpus of Robert Harsh. Sua sponte, cause dismissed. Motions for appointment of counsel and for declaratory judgment and injunctive relief denied as moot.

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

**MOTION AND PROCEDURAL RULINGS**

**2009-1873. Hillman v. Edwards.**

Franklin App. Nos. 08AP-1063 and 08AP-1064, 2009-Ohio-5087. On demand for findings of fact and conclusions of law. Demand denied.

**2010-1473. Hillman v. Edwards.**

Franklin App. Nos. 10AP-58 and 10AP-59, 2010-Ohio-3524. On demand for findings of fact and conclusion of law. Demand denied.

**2010-1536. State ex rel. O’Shea & Assoc. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.**

Cuyahoga App. No. 93275, 190 Ohio App.3d 218, 2010-Ohio-3416. On request for oral argument. Request granted.

Pfeifer and O’Donnell, JJ., dissent and would reverse the judgment of the court of appeals.

**2011-0194. Young v. Bradshaw.**

In Habeas Corpus. On request for findings of facts and conclusion of law. Request denied.

**2011-0422. State ex rel. Lemons v. Kontos.**

Trumbull App. No. 2010-T-0101, 2011-Ohio-653. On appellee’s motion to strike and/or dismiss. Motion denied, but appellant is ordered to properly serve his notice of appeal on appellee’s counsel, and the cause will otherwise proceed in accordance with S.Ct.Prac.R. 6.2 through 6.7.

**2011-0438. Schwering v. TRW Vehicle Safety Sys., Inc.**

Certified Question of State Law, United States District Court, Southern District of Ohio, Western Division, Case No. 1:10-CV-679. On review of preliminary memoranda pursuant to S.Ct.Prac.R. 18.6. The court will answer the following question:

“Where a jury has been empaneled and sworn and the trial has commenced for purposes of Ohio Civ.R. 41(A)(1)(a), and the trial court subsequently declares a mistrial, does Civ.R. 41(A)(1)(a) permit the plaintiff to unilaterally voluntarily dismiss his or her claims without prejudice?”

O’Donnell, J., dissents.

**2011-0504. State v. Mitchell.**

Cuyahoga App. No. 94917, 2011-Ohio-477. On motion for leave to file delayed appeal. Motion granted.

**2011-0505. State v. Nevins.**

Montgomery App. No. 24070, 2011-Ohio-389. On motion for leave to file delayed appeal. Motion granted.

O'Connor, C.J., dissents.

**2011-0508. State v. McGrath.**

Cuyahoga App. No. 93445, 2010-Ohio-4477. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2011-0518. State v. Potchik.**

Montgomery App. No. 23865, 2011-Ohio-501. On motion for leave to file delayed appeal. Motion granted.

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

**2011-0530. State v. Clemmons.**

Montgomery App. No. 23237, 2010-Ohio-3109. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2011-0548. State v. Conner.**

Lucas App. No. L-09-1159, 2010-Ohio-6500. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2011-0574. State v. Martin.**

Cuyahoga App. No. 95281, 2011-Ohio-222. On motion for leave to file delayed appeal. Motion granted.

O'Connor, C.J., dissents.

**2011-0575. State v. Nooks.**

Montgomery App. No. 23591, 2010-Ohio-5049. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lanzinger, JJ., dissent.

**2011-0583. State v. Parsons.**

Auglaize App. No. 2-10-27, 2011-Ohio-168. On motion for leave to file delayed appeal. Motion granted.

O'Donnell, J., dissents.

**2011-0595. State v. Little.**

Lorain App. No. 10CA009758, 2011-Ohio-768. On motion for leave to file delayed appeal. Motion granted.

O'Connor, C.J., and McGee Brown, J., dissent.

**2011-0596. State v. Bostic.**

Cuyahoga App. No. 96170. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Cupp, and McGee Brown, JJ., dissent.

**2011-0602. State v. Millan.**

Cuyahoga App. No. 94723, 2011-Ohio-331. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2011-0107. In re J.V.**

Cuyahoga App. No. 94820, 2010-Ohio-5490.

Cupp and McGee Brown, JJ., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

**2011-0312. Hartley v. State.**

Licking App. No. 10 CA 65, 2011-Ohio-96. Discretionary appeal accepted; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

O'Connor, C.J., and Pfeifer and Lundberg Stratton, JJ., dissent.

**2011-0412. State v. Hooper.**

Montgomery App. No. 22883. Discretionary appeal accepted; cause held for the decision in 2010-1007 and 2010-1372, *State v. Lester*, Auglaize App. No. 2-10-20; and briefing schedule stayed.

Pfeifer, Lundberg Stratton, and McGee Brown, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2010-2135. State v. Curtis.**

Brown App. No. CA2010-02-002.

**2010-2165. State v. Humr.**

Portage App. No. 2010-P-0004, 2010-Ohio-5057.

**2011-0062. State v. Bradley.**

Van Wert App. No. 15-10-03, 2010-Ohio-5422.

**2011-0176. State v. Williams.**

Cuyahoga App. No. 94242, 2010-Ohio-5484. Discretionary appeal and cross-appeal not accepted.

**2011-0223. In re Guardianship of Soltesz.**

Erie App. No. E-10-057.

**2011-0278. State v. Slates.**

Summit App. No. 25019, 2011-Ohio-295.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law Nos. I and V.

**2011-0291. State v. Drake.**

Montgomery App. No. 23838, 2011-Ohio-25.

**2011-0301. Brickner v. Wittwer.**

Hardin App. No. 6-10-12, 2011-Ohio-39.

**2011-0303. State v. Gross.**

Warren App. No. CA2010-03-030, 2011-Ohio-55.

O'Connor, C.J., and O'Donnell and McGee Brown, JJ., dissent.

**2011-0304. Chambers v. Cottrell.**

Lucas App. No. L-10-1178, 2011-Ohio-144.

O'Donnell, J., dissents.

**2011-0305. State v. Page.**

Cuyahoga App. No. 94369, 2011-Ohio-83.

Cupp and McGee Brown, JJ., dissent.

**2011-0313. Estate of Hall v. Akron Gen. Med. Ctr.**

Summit App. No. 24066, 2011-Ohio-60.

**2011-0314. Waiters v. Lavelle.**

Cuyahoga App. No. 95270, 2011-Ohio-116.

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

**2011-0318. State v. Bailey.**

Cuyahoga App. Nos. 94083 and 94084, 2010-Ohio-6155.

**2011-0319. State v. Dennis.**

Hamilton App. No. C-100084.

**2011-0322. State v. Williams.**

Cuyahoga App. No. 94860, 2011-Ohio-108.

**2011-0324. State v. Hawkins.**

Cuyahoga App. No. 94294, 2011-Ohio-74.

O'Connor, C.J., dissents.

**2011-0326. State v. Tate.**

Cuyahoga App. No. 94026, 2011-Ohio-69.

**2011-0328. Sogg v. Goodman.**

Franklin App. No. 10AP-358, 2011-Ohio-81.

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

Pfeifer and McGee Brown, JJ., dissent.

**2011-0332. State v. Barnes.**

Cuyahoga App. No. 92512. 2011-Ohio-63.

**2011-0334. State v. Hayes.**

Cuyahoga App. No. 94697, 2011-Ohio-605.

**2011-0341. State v. Lopez.**

Cuyahoga App. No. 94312, 2011-Ohio-182.

**2011-0342. Cardinal Partners, Ltd. v. Fernandez Discipline, L.L.C.**

Lucas App. No. L-10-1180, 2010-Ohio-5642.

**2011-0344. Zakharevskaia v. OCLC Online Computer Library Ctr.**

Franklin App. No. 10AP-942.

**2011-0346. State v. Newman.**

Hamilton App. No. C-090735.

**2011-0348. Penix v. Ohio Real Estate Appraiser Bd.**

Fairfield App. No. 10-CA-19, 2011-Ohio-191.

**2011-0350. State v. Skerness.**

Coshocton App. No. 09-CA-28, 2011-Ohio-188.

**2011-0351. In re K.K.**

Fairfield App. No. 10-CA-30, 2011-Ohio-192.

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

**2011-0356. State v. Blazer.**

Cuyahoga App. No. 93980, 2010-Ohio-6367.

**2011-0358. Lycan v. Cleveland.**

Cuyahoga App. No. 94353, 2010-Ohio-6021.

Lundberg Stratton, J., dissents.

O'Donnell, J., not participating.

**2011-0359. State v. Toles.**

Cuyahoga App. Nos. 94886 and 94889, 2011-Ohio-217.

Lundberg Stratton, J., dissents.

**2011-0360. Estate of Mankin v. Consol. Rail Corp.**

Cuyahoga App. No. 96237.

O'Donnell, J., dissents.

**2011-0361. White v. Norfolk S. Ry. Co.**

Cuyahoga App. No. 96238.

O'Donnell, J., dissents.

**2011-0362. Copeland v. Norfolk S. Ry. Co.**

Cuyahoga App. No. 96239.

O'Donnell, J., dissents.

**2011-0363. Trotwood v. S. Cent. Constr., L.L.C.**

Montgomery App. Nos. 23689 and 23772, 2011-Ohio-237.

**2011-0365. White v. Sears, Roebuck & Co.**



Franklin App. No. 10AP-294, 2011-Ohio-204.  
Pfeifer, J., dissents.

**2011-0367. State v. Lake.**

Richland App. No. 2010 CA 88, 2011-Ohio-261.

**2011-0369. State v. Akemon.**

Hamilton App. No. C-090749.

**2011-0371. State v. Foti.**

Lake App. No. 2009-L-163, 2010-Ohio-5931.

**2011-0372. State v. Mobley.**

Richland App. No. 2010-CA-0018, 2011-Ohio-309.

**2011-0380. Opaczewski v. Port Lawrence Title & Trust Co.**

Lucas App. No. L-09-1323, 2011-Ohio-360.

**2011-0381. Kennedy v. Pelzer.**

Hamilton App. No. C-100228.

**2011-0382. State v. Carter.**

Clinton App. Nos. CA2010-07-012 and CA2010-08-016, 2011-Ohio-414.

**2011-0385. State v. Elder.**

Summit App. No. 25259, 2011-Ohio-294.

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

**2011-0386. State v. Rice.**

Lucas App. No. L-10-1120, 2011-Ohio-357.

**2011-0387. In re D.H.**

Gallia App. No. 10CA2, 2011-Ohio-601.

O'Donnell and McGee Brown, JJ., dissent.

**2011-0390. Riddle v. Auerbach.**

Franklin App. No. 10AP-508, 2011-Ohio-556.

Pfeifer and McGee Brown, JJ., dissent.

**2011-0393. State v. Jaffal.**

Cuyahoga App. No. 93142, 2011-Ohio-419.

**2011-0394. State v. Denny.**

Wayne App. No. 10CA0050.

**2011-0398. State v. Taylor.**

Ottawa App. No. OT-09-018, 2011-Ohio-359.

**2011-0400. Peters Family Farm, Inc. v. Sav. Bank.**

Pickaway App. No. 10CA2, 2011-Ohio-665.

Pfeifer, J., dissents.

**2011-0402. State v. Mielke.**

Franklin App. No. 10AP-48, 2011-Ohio-277.

**2011-0403. State v. Langford.**

Franklin App. No. 09AP-1140.

Pfeifer and O'Donnell, JJ., dissent.

**2011-0406. State v. Hall.**

Putnam App. No. 12-10-11, 2011-Ohio-659.

**2011-0411. JDI Murray Hill, L.L.C. v. Flynn Properties, L.L.C.**

Cuyahoga App. No. 94259, 2010-Ohio-6158 and 2011-Ohio-301.

**2011-0418. State v. Schmidt.**

Mercer App. No. 10-10-04.

**2011-0419. State v. Coleman.**

Cuyahoga App. No. 94866, 2011-Ohio-341.

**2011-0420. State v. Porosky.**

Cuyahoga App. No. 94705, 2011-Ohio-330.

**2011-0421. State v. Sykes.**

Summit App. No. 25263, 2011-Ohio-293.

**2011-0423. State v. Donaldson.**

Franklin App. No. 09AP-399.

**2011-0446. State v. Walker.**

Wayne App. No. 10CA0011, 2011-Ohio-517.

**2011-0456. State v. Byram.**

Wood App. No. WD-10-085.

**2011-0459. State v. Moore.**

Greene App. No. 2010 CA 13, 2011-Ohio-636.

**2011-0463. State v. Adams.**

Butler App. No. CA2009-11-293, 2011-Ohio-536.

**2011-0468. State v. Tucker.**

Clark App. No. 2009 CA 82.

**2011-0476. State v. Smith.**

Hamilton App. No. C-090645.

O'Donnell, J., dissents.

**2011-0479. State v. Griffin.**

Hamilton App. No. C-100068.

**2011-0495. State v. Hall.**

Clark App. No. 10-CA-23, 2011-Ohio-635.

**2011-0497. State v. Benford.**

Summit App. No. 25298, 2011-Ohio-564.

**2011-0498. State v. Bridges.**

Cuyahoga App. No. 94469, 2010-Ohio-6359.

**2011-0499. State v. Chandler.**

Cuyahoga App. Nos. 93664 and 93665, 2011-Ohio-590.

**2011-0502. State v. Wright.**

Hamilton App. No. C-100376.

**2011-0507. State v. Harrison.**

Cuyahoga App. No. 93132, 2011-Ohio-699.

**2011-0509. State v. Wulff.**

Cuyahoga App. No. 94087, 2011-Ohio-700.

**2011-0511. State v. Albourque.**

Cuyahoga App. No. 96274.

**2011-0523. Bykova v. Cuyahoga Cty. Dept. of Children & Family Servs.**

Cuyahoga App. No. 95484, 2011-Ohio-1250.

O'Donnell, J., dissents.

**2011-0526. State v. Martin.**

Hamilton App. No. C-090871.

**2011-0536. In re J.C.**

Franklin App. No. 10AP-766, 2011-Ohio-715.

**2011-0544. State v. Craig.**

Cuyahoga App. No. 94455, 2011-Ohio-206.

**2011-0545. State v. Wenker.**

Summit App. No. 25185, 2011-Ohio-786.

**2011-0549. Robinson v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 10AP-550, 2011-Ohio-713.

**RECONSIDERATION OF PRIOR DECISIONS**

**2010-2137. Ironton v. Rist.**

Lawrence App. No. 10CA10, 2010-Ohio-5292. Reported at 128 Ohio St.3d 1425, 2011-Ohio-1049, 943 N.E.2d 572. On motion for reconsideration. Motion denied.

O'Donnell and Lanzinger, JJ., dissent.

**2010-2174. State v. Gueye.**

Hamilton App. No. C-090514. Reported at 128 Ohio St.3d 1426, 2011-Ohio-1049, 943 N.E.2d 572. On motion for reconsideration. Motion denied.

**2010-2178. Ruggles v. Ruggles Family Ltd. Partnership.**

Huron App. No. H-09-031, 2010-Ohio-3923. Reported at 128 Ohio St.3d 1426, 2011-Ohio-1049, 943 N.E.2d 573. On motion for reconsideration. Motion denied.

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

**2010-2235. State v. Marzett.**

Cuyahoga App. No. 93805, 2010-Ohio-5428. Reported at 128 Ohio St.3d 1427, 2011-Ohio-1049, 943 N.E.2d 573. On motion for reconsideration. Motion denied.  
Lanzinger and McGee Brown, JJ., dissent.

**2010-2289. State v. Griffith.**

Franklin App. No. 10AP-94, 2010-Ohio-5556. Reported at 128 Ohio St.3d 1428, 2011-Ohio-1049, 943 N.E.2d 574. On motion for reconsideration. Motion denied.

**2011-0029. State v. Malone.**

Lorain App. No. 09CA009732, 2010-Ohio-5658. Reported at 128 Ohio St.3d 1445, 2011-Ohio-1618, 944 N.E.2d 695. On motion for reconsideration. Motion denied.

O'Connor, C.J., and Lanzinger and McGee Brown, JJ., dissent.

**2011-0067. State v. Houston.**

Franklin App. No. 09AP-592, 2010-Ohio-4374. Reported at 128 Ohio St.3d 1446, 2011-Ohio-1618, 944 N.E.2d 695. On motion for reconsideration. Motion denied.  
Cupp, J., dissents.

**2011-0068. State v. Jackson.**

Franklin App. Nos. 09AP-687 and 09AP-689, 2010-Ohio-4375. Reported at 128 Ohio St.3d 1446, 2011-Ohio-1618, 944 N.E.2d 695. On motion for reconsideration. Motion denied.

Cupp, J., dissents.

**2011-0079. State v. Garnett.**

Franklin App. No. 09AP-1149, 2010-Ohio-5865. Reported at 128 Ohio St.3d 1447, 2011-Ohio-1618, 944 N.E.2d 696. On motion for reconsideration. Motion denied.

**2011-0084. [State ex rel.] Henderson v. Finnegan.**

In Procedendo. Reported at 128 Ohio St.3d 1441, 2011-Ohio-1618, 944 N.E.2d 692. On motion for reconsideration and petition for judicial notice. Motion and petition denied.

**2011-0087. Pinkney v. Ohio Dept. of Job & Family Servs.**

Cuyahoga App. No. 94696, 2010-Ohio-5252. Reported at 128 Ohio St.3d 1429, 2011-Ohio-1049, 943 N.E.2d 574. On motion for reconsideration. Motion denied.

**2011-0095. State v. Burston.**

Cuyahoga App. No. 93645, 2010-Ohio-5120. Reported at 128 Ohio St.3d 1447, 2011-Ohio-1618, 944 N.E.2d 696. On motion for reconsideration. Motion denied.

Cupp, J., dissents and would grant the motion, accept the appeal on Proposition of Law No. I, and hold the cause for the decision in 2010-1448, *State v. Barker*, Lucas App. No. L-09-1139, 2010-Ohio-3067.