

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

February 7, 2007

[Cite as *02/07/2007 Case Announcements, 2007-Ohio-388.*]

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## MERIT DECISIONS WITH OPINIONS

### **2005-1802. Morrow Cty. Airport Auth. v. Whetstone Flyers, Ltd., 2007-Ohio-255.**

Morrow App. No. 2004 CA 0006, 162 Ohio App.3d 624, 2005-Ohio-4314. Judgment reversed and cause remanded.

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

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

Cheryl L. Waite, J., of the Seventh Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

### **2005-2075 and 2005-2211. State v. Pelfrey, 2006-Ohio-256.**

Montgomery App. No. 19955, 2005-Ohio-5006. Judgment affirmed.

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

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

Sean C. Gallagher, J., of the Eighth Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

### **2005-2134. Preferred Capital, Inc. v. Power Engineering Group, Inc., 2007-Ohio-257.**

Summit App. Nos. 22475, 22476, 22477, 22478, 22485, 22486, 22487, 22488, 22489, 22497, 22499, 22506 and 22513, 163 Ohio App.3d 522, 2005-Ohio-5113. Judgment reversed.

Moyer, C.J., Boggins, O'Connor and O'Donnell, JJ., concur.

Pfeifer, J., concurs in judgment only.

Lundberg Stratton and Lanzinger, JJ, dissent.

John F. Boggins, J., of the Fifth Appellate District, was assigned to sit for Resnick, J., whose term ended on January 1, 2007.

Cupp, J., whose term began on January 2, 2007, did not participate in the consideration or decision of this case.

**2006-1038. State ex rel. Boccuzzi v. Cuyahoga Cty. Bd. of Commrs., 2007-Ohio-323.**

Cuyahoga App. No. 86333, 2006-Ohio-1835. Judgment affirmed.

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

**2006-1639. Cincinnati Bar Assn. v. Rothermel, 2007-Ohio-258.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 05-090. Christian Dean Rothermel, Attorney Registration No. 0043140, is permanently disbarred from the practice of law in Ohio.

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

Cupp, J., not participating.

**MERIT DECISIONS WITHOUT OPINIONS**

**2006-0018. State ex rel. Martin v. Holloway.**

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

**2006-0967. Fordney v. Hardin Cty.**

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

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

**2006-2184. Luckey v. Butler Cty.**

Certified Question of State Law, United States District Court for the Southern District of Ohio, Western Division, No. 1:06CV123. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court declines to answer the certified question.

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

**2006-2192. State ex rel. Griffin v. Jones Wenner Ins. Agency, Inc.**

In Mandamus. On motions to dismiss of respondents Jones Wenner Insurance Agency, Inc. and John Villilo, relator's motions for default judgment and sanctions, to strike motion to dismiss, and for jury trial, and respondents' joint motion to strike motion for jury trial. Motions to dismiss granted. All other motions denied as moot. Cause dismissed.

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

**2006-2368. Powell v. Wolfe.**

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

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

## **MOTION AND PROCEDURAL RULINGS**

**2005-0400. State v. Lather.**

Sandusky App. No. S-03-008, 2005-Ohio-668. On motion to direct the court of appeals to rule on assignments of error. Motion granted.

Pfeifer, J., dissents.

**2006-1212. Arbino v. Johnson & Johnson.**

Certified Question of State Law, United States District Court for the Northern District of Ohio, Western Division, No. 3:06 CV 40010. On motions for admission pro hac vice of Mark A. Behrens and Christopher E. Appel by Victor Schwartz. Motions granted.

**2006-1443. Columbia Gas Transm. Corp. v. Levin.**

Board of Tax Appeals, No. 2003-K-1876. On request for oral argument. Request granted.

**2006-2265. Mendenhall v. Akron.**

Certified Question of State Law, United States District Court for the Northern District of Ohio, Eastern Division, Nos. 5:06 CV 0139 and 5:06 CV 0154. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question:

“Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.”

**2006-2303. State v. Duffield.**

Summit App. No. 22634, 2006-Ohio-1823. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Lundberg Stratton and Cupp, JJ., dissent.

**2006-2316. State v. Muncey.**

Madison App. No. CA2006-06-023, 2006-Ohio-6358. On motion to stay notice of appeal. Motion denied.

**2006-2327. State v. Courtney.**

Cuyahoga App. No. 86914, 2006-Ohio-4264. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2006-2339. State v. Neff.**

Trumbull App. No. 2006-T-0076, 2006-Ohio-4539. On motion for leave to file delayed appeal. Motion granted.

O'Donnell, J., dissents.

**2006-2375. Johnson v. Johnson.**

Guernsey App. No. 05-CA-49, 2006-Ohio-5901. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, Lundberg Stratton and Cupp, JJ., dissent.

**2006-2395. Estate of Graves v. Circleville.**

Ross App. No. 06CA2900, 2006-Ohio-6626. On motion for stay of court of appeals' judgment. Motion granted.

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

**2007-0042. State v. Martin.**

Trumbull App. No. 2005-T-0041, 2006-Ohio-6202. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, Lundberg Stratton and Lanzinger, JJ., dissent.

**2007-0059. State v. Franklin.**

Highland App. Nos. 05CA20 and 05CA21, 2006-Ohio-6369. On motion for stay of execution of sentence and release upon bail pending appeal. Motion granted.

Pfeifer, Lundberg Stratton and Lanzinger, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2006-1689. State v. Price.**

Montgomery App. No. 21370, 2006-Ohio-3856.

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

**2006-1943. Hall v. Mem. Hosp. of Union Cty.**

Union App. No. 14-06-03, 2006-Ohio-4552. Discretionary appeal accepted on Proposition of Law No. II; cause held for the decision in 2006-1528 and 2006-1589, *Hubbell v. Xenia*, Greene App. No. 2005 CA 99, 2006-Ohio-3369; and briefing schedule stayed.

Moyer, C.J., and Lundberg Stratton, J., would also accept the appeal on Proposition of Law No. III.

Pfeifer and Lanzinger, JJ., dissent.

Cupp, J., not participating.

**2006-2029. Stewart v. Lake Cty. Historical Soc., Inc.**

Lake App. No. 2004-L-164, 2006-Ohio-4822. Discretionary appeal accepted on Proposition of Law Nos. I and III; cause held on Proposition of Law No. III only for the decision in 2006-0189, *Uddin v. Embassy Suites Hotel*, Franklin App. No. 04AP-754, 2005-Ohio-6613; and briefing schedule stayed as to Proposition of Law No. III.

Moyer, C.J., Stratton and Cupp, JJ., would also accept the appeal on Proposition of Law No. II.

O'Donnell, J., would accept the appeal on Proposition of Law No. III only.

Pfeifer and Lanzinger, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2006-1796. State v. Adrian.**

Champaign App. No. 2005 CA 23, 2006-Ohio-4143. Discretionary appeal and cross-appeal not accepted.

Lundberg Stratton, J., dissents and would accept the cross-appeal.

**2006-1893. Peterman v. Stewart.**

Delaware App. No. 05-CAE-12-0084, 2006-Ohio-4671.

**2006-1916. Melcher v. Ryan.**

Belmont App. No. 05 BE 40, 2006-Ohio-4609.

**2006-1922. State v. Kelley.**

Hamilton App. No. C-060678.

**2006-1934. State v. Cross.**

Franklin App. No. 06AP-742.

**2006-1941. State v. Rodriguez.**

Allen App. No. 1-06-56.

**2006-1947. Burdge v. Kerasotes Showplace Theatres, LLC.**

Butler App. No. CA2006-02-023, 2006-Ohio-4560.

O'Connor and O'Donnell, JJ., dissent.

**2006-1948. Burdge v. Children's Place Retail Stores, Inc.**

Fayette App. No. CA2006-01-005, 2006-Ohio-4564.

O'Connor and O'Donnell, JJ., dissent.

**2006-1953. State ex rel. Gregoire v. Cincinnati.**

Hamilton App. No. C-050772.

**2006-1954. State v. James.**

Lake App. No. 2005-L-099.

**2006-1956. State v. Johnson.**

Lake App. No. 2004-L-215, 2006-Ohio-4540.

**2006-1957. Fraternal Order of Police, Queen City Lodge No. 69 v. Cincinnati.**

Hamilton App. No. C-050866, 2006-Ohio-4598.

**2006-1958. State v. Lee.**

Allen App. No. 1-06-71.

**2006-1964. State v. McCaleb.**

Greene App. No. 05CA155, 2006-Ohio-4652.

**2006-1967. Fifth Third Bank v. Cozzolino.**

Delaware App. No. 2006CAE050033, 2006-Ohio-4673.  
Cupp, J., dissents.

**2006-1968. State v. Franklin.**

Summit App. No. 22771, 2006-Ohio-4569.

**2006-1969. State v. Jackson.**

Franklin App. No. 06AP-703, 2006-Ohio-4787.

**2006-1976. Wise v. Meyer.**

Greene App. No. 2005 CA 113, 2006-Ohio-4654.

**2006-1977. Werden v. Children's Hosp. Med. Ctr.**

Hamilton App. No. C-040889, 2006-Ohio-4600.

**2006-1980. Dunn v. Dunn.**

Clark App. No. 05-CA-104, 2006-Ohio-4649.

**2006-1981. State v. Tuck.**

Hamilton App. No. C-050613.

**2006-1982. Staerker v. CSX Transp., Inc.**

Lucas App. No. L-05-1416, 2006-Ohio-4803.

**2006-1986. Banc of Am. Strategic Solutions, Inc. v. Cooker Restaurant Corp.**

Franklin App. No. 05AP-1126, 2006-Ohio-4567.

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

**2006-1987. Felix v. Ganley Chevrolet, Inc.**

Cuyahoga App. Nos. 86990 and 86991.

Lundberg Stratton, J., dissents.

**2006-1988. State v. Smith.**

Trumbull App. No. 2005-T-0080, 2006-Ohio-4669.

O'Connor, J., not participating.

**2006-1990. Dickess v. Stephens.**

Lawrence App. No. 05CA26, 2006-Ohio-4972.  
O'Connor, J., dissents.

**2006-1992. Gutierrez v. Mika Metal Fabricators.**  
Lake App. No. 2005-L-152, 2006-Ohio-4818.

**2006-1995. State v. Zukowski.**  
Franklin App. No. 06AP-46, 2006-Ohio-5299.

**2006-1996. Hous. Advocates, Inc. v. Am. Fire & Cas. Co.**  
Cuyahoga App. Nos. 86444 and 87305, 2006-Ohio-4880. Discretionary appeal not accepted.

Pfeifer, J., dissents.

O'Connor, J., not participating.

On motion for admission pro hac vice of Timothy A. Wolfe by Walter Krohngold and motion for admission pro hac vice of Carol A. Rutter by Gerald V. Weigle, Jr. Motions granted.

**2006-2001. In re Estate of Metz.**  
Huron App. No. H-05-024, 2006-Ohio-4809.  
Pfeifer, J., dissents.

**2006-2002. State v. Richardson.**  
Hamilton App. No. C-050663.

**2006-2007. Dingus v. Kirwan.**  
Erie App. No. E-05-082, 2006-Ohio-4295. Discretionary appeal not accepted.  
Motion to dismiss denied as moot.

**2006-2009. State v. Rucker.**  
Franklin App. No. 05AP-786.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal, reverse the judgment of the court of appeals, and remand the cause for resentencing on the authority of *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

Lundberg Stratton, J., dissents.

**2006-2011. Estate of Heintzelman v. Air Experts, Inc.**  
Delaware App. No. 2005-CAPE-08-0054, 2006-Ohio-4832.  
Moyer, C.J., and O'Connor, J., dissent.

**2006-2012. State v. Cline.**

Franklin App. No. 05AP-869, 2006-Ohio-4782.

Pfeifer, J., dissents.

**2006-2013. State v. Ryan.**

Wood App. No. WD-05-064, 2006-Ohio-5120. Discretionary appeal not accepted. Motion to withdraw Proposition of Law No. VI denied as moot.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., would grant the motion to withdraw Proposition of Law No. VI.

**2006-2014. Barksdale v. Serv. Emp. Internatl. Union Dist. 1199.**

Cuyahoga App. No. 87204, 2006-Ohio-4888.

**2006-2015. State v. Almazan.**

Medina App. No. 05CA0098-M, 2006-Ohio-5047.

**2006-2019. State v. Ayers.**

Erie App. No. E-05-079, 2006-Ohio-5108.

**2006-2020. Clark v. Clark.**

Trumbull App. No. 2005-T-0060, 2006-Ohio-4820.

**2006-2022. Mears v. Zeppe's Franchise Dev. LLC.**

Cuyahoga App. No. 88593.

Lundberg Stratton, J., dissents.

O'Connor and Cupp, JJ., dissent and would accept the appeal on Proposition of Law No. I.

**2006-2024. Filon v. Green.**

Summit App. No. 23087, 2006-Ohio-4868.

O'Connor and Lanzinger, JJ., dissent.

**2006-2030. State v. Baker.**

Hamilton App. No. C-050791, 2006-Ohio-4902.

Moyer, C.J., dissents and would accept the appeal and hold the cause for the decision in 2006-1973, *State v. Sarkozy*, Cuyahoga App. No. 86952, 2006-Ohio-3977.

**2006-2031. State v. Albanese.**

Portage App. No. 2005-P-0054, 2006-Ohio-4819.

**2006-2032. State v. Nguyen.**

Summit App. No. 22883, 2006-Ohio-5064.

**2006-2039. Baker v. Domokur.**

Mahoning App. No. 05-MA-159, 2006-Ohio-5227.

**2006-2050. State v. Hargrove.**

Franklin App. No. 06AP-736.

**2006-2057. Perrysburg Twp. v. Rossford.**

Wood App. No. WD-06-008, 2006-Ohio-4917.

O'Connor, J., dissents.

**2006-2063. Hollingsworth v. Time Warner Cable.**

Hamilton App. No. C-050549, 2006-Ohio-4903.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

**2006-2074. Deerfield Village Condominium Owners Assn., Inc. v. Steve Wittman Constr.**

Butler App. No. CA2006-04-084, 2006-Ohio-4961.

**2006-2076. State v. Hirsch.**

Hamilton App. No. C-050529.

**2006-2080. State v. Milam.**

Cuyahoga App. No. 86268, 2006-Ohio-4742.

**2006-2084. State v. Breckenridge.**

Franklin App. No. 05AP-868, 2006-Ohio-5038.

**2006-2085. Nielsen v. Andersons, Inc.**

Lucas App. No. L-06-1073, 2006-Ohio-5118.

**2006-2089. Ellis v. Patonai.**

Wayne App. No. 06CA0012, 2006-Ohio-5054.

**2006-2108. Community Hous. Network, Inc. v. Stoyer.**

Franklin App. No. 06AP-73, 2006-Ohio-5094. Discretionary appeal not accepted. Motion to strike memorandum in response denied as moot.

**2006-2147. State v. Bowerman.**

Stark App. No. 2004CA00319, 2005-Ohio-6659.  
Pfeifer, J., dissents.

**2006-2199. State v. Stevens.**

Lucas App. No. L-06-1128, 2006-Ohio-5358.

**RECONSIDERATION OF PRIOR DECISIONS**

**2004-1163. State v. Johnson.**

Guernsey C.P. No. 03-CR-116. Reported at 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144. On motion for reconsideration. Motion denied.  
Cupp, J., not participating.

**2006-1081. Acordia of Ohio, LLC v. Davis.**

Hamilton App. No. C-050559. Reported at 112 Ohio St.3d 1404, 2006-Ohio-6447, 858 N.E.2d 816. On motion for reconsideration. Motion denied.  
Cupp, J., not participating.

**2006-1597. Kelly v. Auto-Owners Ins. Co.**

Hamilton App. No. C-050450, 2006-Ohio-3599. Reported at 112 Ohio St.3d 1406, 2006-Ohio-6447, 858 N.E.2d 817. On motion for reconsideration. Motion denied.  
Cupp, J., not participating.

**2006-1609. Solon v. Mazala.**

Cuyahoga App. No. 87055. Reported at 112 Ohio St.3d 1406, 2006-Ohio-6447, 858 N.E.2d 818. On motion for reconsideration. Motion denied.  
Cupp, J., not participating.

**2006-1619. Flynn v. Westfield Ins. Co.**

Hamilton App. No. C-050909, 2006-Ohio-3719. Reported at 112 Ohio St.3d 1406, 2006-Ohio-6447, 858 N.E.2d 818. On motion for reconsideration. Motion granted and cross-appeal accepted on Proposition of Law No. I.  
Pfeifer and Lanzinger, JJ., dissent.  
Cupp, J., not participating.

**2006-1794. State v. Skipworth.**

Cuyahoga App. No. 80662, 2005-Ohio-882. Reported at 112 Ohio St.3d 1409, 2006-Ohio-6447, 858 N.E.2d 819. On motion for reconsideration. Motion denied. Lundberg Stratton and O'Donnell, JJ., dissent. Cupp, J., not participating.