

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

October 3, 2007

[Cite as *10/03/2007 Case Announcements, 2007-Ohio-5056.*]

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## MERIT DECISIONS WITH OPINIONS

**2005-0192. State v. Mundt, 2007-Ohio-4836.**

Noble C.P. No. CRI 204-2002CR. Judgment affirmed.

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

**2005-1358. State ex rel. Spohn v. Indus. Comm., 2007-Ohio-5027.**

Franklin App. No. 04AP-626, 2005-Ohio-2800. Judgment affirmed.

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

**2006-0165. State ex rel. Shelly Materials, Inc. v. Clark Cty. Bd. of Commrs., 2007-Ohio-5022.**

Clark App. No. 2003-CA-72, 2005-Ohio-6682. Judgment affirmed.

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

**2006-0705. Terry v. Caputo, 2007-Ohio-5023.**

Ottawa App. No. OT-05-009, 165 Ohio App.3d 638, 2006-Ohio-866. 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.

**2005-0749. State v. Brown, 2007-Ohio-4837.**

Cuyahoga C.P. No. CR 447563. Judgment vacated and cause remanded.

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

**2006-0785. Ohio Pyro, Inc. v. Ohio Dept. of Commerce, 2007-Ohio-5024.**

Fayette App. Nos. CA2005-03-009 and CA2005-03-011, 2006-Ohio-1002. Judgment reversed and cause remanded.

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

Pfeifer, J., concurs in judgment only.

O'Donnell, J., dissents.

**2006-0826. State v. Davis, 2007-Ohio-5025.**

Marion App. No. 9-05-34, 166 Ohio App.3d 37, 2006-Ohio-1141. Judgment affirmed.

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

Lundberg Stratton, J., concurs in judgment.

O'Donnell, J., concurs separately.

**2006-1033. St. Marys v. Auglaize Cty. Bd. of Commrs., 2007-Ohio-5026.**

Auglaize App. No. 2-05-17, 2006-Ohio-1773. Judgment affirmed.

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

O'Donnell and Lanzinger, JJ., dissent.

Cupp, J., dissents and would dismiss the appeal as having been improvidently accepted.

**2006-1242 and 2006-1243. Proctor v. Kardassilaris, 2007-Ohio-4838.**

Trumbull App. No. 2005-T-0026, 2006-Ohio-2385, and Trumbull App. No. 2005-T-0027, 2006-Ohio-6171. Judgments affirmed.

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

Pfeifer, J., dissents.

**2006-1528 and 2006-1589. Hubbell v. Xenia, 2007-Ohio-4839.**

Greene App. No. 2005 CA 99, 167 Ohio App.3d 294, 2006-Ohio-3369. Judgment reversed and cause remanded.

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

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

**2006-1695. In re Adams, 2007-Ohio-4840.**

Cuyahoga App. No. 87881. Judgment affirmed.

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

## MERIT DECISIONS WITHOUT OPINIONS

### **2007-1602. Russell v. Jackson.**

In Habeas Corpus. On petition for writ of habeas corpus of Mark R. Russell. Sua sponte, cause dismissed.

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

## MOTION AND PROCEDURAL RULINGS

### **2007-1157. Disciplinary Counsel v. Parker.**

Board of Commissioners on Grievances and Discipline, No. 05-091. On motion to strike brief of amicus curiae William Scherpenberg, Mason Municipal Court Clerk. Motion granted.

Pfeifer and Lundberg Stratton, JJ., dissent.

### **2007-1372 and 2007-1373. LaNeve v. Atlas Recycling, Inc.**

Trumbull App. No. 2006-T-0032, 2007-Ohio-2856. On review of orders certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 5 of the court of appeals' Judgment Entry filed June 29, 2007:

"Does the Ohio savings statute, R.C. 2305.19(A), apply to an action where plaintiff fails to comply strictly with the requirements of Civ.R. 15(D) in serving the original complaint?"

Pfeifer, J., dissents.

The conflict cases are *Kramer v. Installations Unlimited, Inc.* (2002), 147 Ohio App.3d 350, *Permanent Gen. COS Ins. Co. v. Corrigan* (May 24, 2001), Cuyahoga App. No. 78290, and *Mustric v. Penn Traffic Corp.* (Sept. 7, 2000), Franklin App. No. 00AP-277.

Sua sponte, cause consolidated with 2007-1199, *LaNeve v. Atlas Recycling, Inc.*, Trumbull App. No. 2006-T-0032, 2007-Ohio-2856.

### **2007-1531. State v. Williams.**

Hamilton App. No. C-050696. On motion for leave to file delayed appeal. Motion denied.

### **2007-1534. State v. Freeman.**

Trumbull App. No. 2004-T-0055, 2006-Ohio-492. On motion for leave to file delayed appeal. Motion denied.

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

O'Connor, J., not participating.

**2007-1540. State v. Mungai.**

Cuyahoga App. No. 89735. On motion for leave to file delayed appeal. Motion denied.

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

**2007-1551. Klein v. Moutz.**

Summit App. No. 23473, 2007-Ohio-3242. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 1 of the court of appeals' Journal Entry filed August 9, 2007:

“Whether a trial court has the authority to tax costs under R.C. 5321.16 which were incurred at the appellate level.”

Pfeifer and O'Donnell, JJ., dissent.

The conflict case is *Breault v. Williamsburg Estates* (Nov. 21, 1986), Lucas App. No. L-86-116.

**2007-1567. State v. Roberts.**

Hamilton App. No. C-050279, 2007-Ohio-856. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2007-1583. State v. Foster.**

Hamilton App. No. C-060720. On motion for leave to file delayed appeal. Motion granted.

O'Connor, J., dissents.

**2007-1589. State v. Bressler.**

Van Wert App. No. 15-06-15. On motion for leave to file delayed appeal. Motion denied.

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

Cupp, J., not participating.

**2007-1642. State v. Mastice.**

Wayne App. No. 06CA0050, 2007-Ohio-4107. On motion for stay of court of appeals' judgment. Motion denied.

**2007-1669. Deutsche Bank Natl. Trust Co. v. Doucet.**

Franklin App. No.07AP-453. On motion for stay of trial court judgment of foreclosure. Motion denied.

Moyer, C.J., dissents and would grant the motion conditioned upon a \$160,000 bond.

**APPEALS ACCEPTED FOR REVIEW**

**2007-0996. VIL Laser Sys., LLC v. Shiloh Industries, Inc.**

Shelby App. No. 17-07-02. Discretionary appeal accepted on Proposition of Law No. I.

Pfeifer, Lundberg Stratton, and Lanzinger, JJ., would also accept the appeal on Proposition of Law No. II.

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

**2007-1039. State v. Davis.**

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

Pfeifer, J., dissents.

**2007-1046. State v. Swann.**

Franklin App. Nos. 06AP-870 and 06AP-899, 171 Ohio App.3d 304, 2007-Ohio-2010. Discretionary appeal accepted on Proposition of Law No. I.

Lundberg Stratton and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. II.

Pfeifer and Cupp, JJ., dissent.

**2007-1062. Hitch v. Thomas.**

Lucas App. No. L-07-1140. Discretionary appeal accepted; motion to dismiss denied; cause held for the decision in 2006-1263, *Manley v. Marisco*, Clinton App. No. CA2006-04-013; and briefing schedule stayed.

Moyer, C.J., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

**2007-1199. LaNeve v. Atlas Recycling, Inc.**

Trumbull App. No. 2006-T-0032, 2007-Ohio-2856. Discretionary appeals accepted and cause consolidated with 2007-1372 and 2007-1373, *LaNeve v. Atlas Recycling, Inc.*, Trumbull App. No. 2006-T-0032, 2007-Ohio-2856.

Pfeifer, J., dissents.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2007-0632. State v. Withers.**

Franklin App. Nos. 06AP-302 and 06AP-303, 2006-Ohio-6989.

**2007-0796. Tyus v. Grand Pointe Health Community.**

Cuyahoga App. No. 88763.

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

**2007-0886. David P. v. Kim D.**

Lucas App. No. L-06-1164, 2007-Ohio-1865.

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

**2007-0905. Blackburn v. Citifinancial, Inc.**

Franklin App. No. 05AP-733, 2007-Ohio-1463. Discretionary appeal and cross-appeal not accepted.

O'Connor, J., dissents and would accept the appeal.

**2007-0923. State v. Bieser.**

Licking App. No. 06CA00045, 2007-Ohio-1960.

**2007-0976. State v. Pinkney.**

Cuyahoga App. No. 88357, 2007-Ohio-1721.

O'Donnell, J., dissents and would accept the appeal and hold the cause for the decision in 2007-1254, *State v. Silsby*, Geauga App. No. 2006-G-2725, 2007-Ohio-2308.

**2007-0981. Simeone v. Girard City Bd. of Edn.**

Trumbull App. No. 2006-T-0056, 2007-Ohio-1775.

**2007-0986. State v. Deer.**

Lucas App. No. L-06-1086, 2007-Ohio-1866.

**2007-0987. State v. Bell.**

Madison App. No. CA2007-03-009.

**2007-0989. State v. Cobb.**

Scioto App. No. 06CA3076, 2007-Ohio-1885.

**2007-0991. State v. Battle.**

Franklin App. No. 06AP-863, 2007-Ohio-1845.

**2007-0993. State v. Smith.**

Ross App. No. 06CA2893, 2007-Ohio-1884.

**2007-0994. State v. Liddle.**

Summit App. No. 23287, 2007-Ohio-1820.

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

**2007-1004. Kapszukiewicz v. Leasor.**

Lucas App. No. L-06-1200, 2007-Ohio-1871.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. I, II, and III.

Pfeifer and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law No. IV.

**2007-1009. State v. Brown.**

Montgomery App. No. 21540, 2007-Ohio-2098.

**2007-1013. State v. Porterfield.**

Trumbull App. No. 2007-T-0017, 2007-Ohio-2054.

**2007-1016. State v. Porterfield.**

Trumbull App. No. 2007-T-0016, 2007-Ohio-2053.

**2007-1017. State v. Young.**

Cuyahoga App. No. 89715.

**2007-1019. State v. Hill.**

Hamilton App. Nos. C-060425 and C-060426.

**2007-1029. Wurzauf v. Honda of Am. Mfg., Inc.**

Union App. No. 14-06-31, 2007-Ohio-1913.

Lundberg Stratton, J., dissents.

Cupp, J., dissents and would accept the appeal and hold the cause for the decision in 2006-0617, *Bickers v. W.S. Life Ins. Co., Inc.*, Hamilton App. No. C-040342, 2006-Ohio-572.

**2007-1031. State v. Moorer.**

Hamilton App. No. C-060358.

**2007-1032. State v. Rollins.**

Paulding App. No. 11-06-09, 2007-Ohio-1910.

Cupp, J., not participating.

**2007-1034. Love Properties, Inc. v. Kyles.**

Stark App. No. 2006 CA 00101, 2007-Ohio-1966.

**2007-1036. Sigmon v. Southwest Gen. Health Ctr.**

Cuyahoga App. No. 88276, 2007-Ohio-2117.

Pfeifer, J., dissents.

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

**2007-1037. Ritt v. Billy Blanks Ents.**

Cuyahoga App. Nos. 88012 and 88034, 171 Ohio App.3d 204, 2007-Ohio-1695.  
Discretionary appeal not accepted.

Moyer, C.J., dissents.

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

Motions for admission pro hac vice of M. Jerome Elmore, Frank M. Lowrey, and Joshua F. Thorpe by John W. Zeiger and of William J.F. Roll III and Kirsten M. Nelson by Robert N. Rapp granted.

**2007-1048. State v. Thomas.**

Hamilton App. No. C-060355.

**2007-1049. Singleton v. Ohio Concrete Resurfacing, Inc.**

Franklin App. No. 06AP-991, 2007-Ohio-2012.

Pfeifer and O'Donnell, JJ., dissent.

**2007-1051. Hughes v. Fed. Mogul Ignition Co.**

Guernsey App. No. 06 CA 27, 2007-Ohio-2021.

Pfeifer, J., dissents.

**2007-1055. Nationwide Life Ins. Co. v. Kallberg.**

Lorain App. No. 06CA008968, 2007-Ohio-2041.

Pfeifer, J., dissents.

**2007-1060. State v. Smith.**

Hamilton App. No. C-060524.

**2007-1061. State v. Madaris.**

Hamilton App. No. C-070329.

**2007-1063. State v. Reynolds.**

Franklin App. No. 06AP-1006, 2007-Ohio-2189.

**2007-1064. Maas v. Penn Cent. Corp.**

Trumbull App. No. 2006-T-0067, 2007-Ohio-2055.

O'Donnell, J., not participating.

**2007-1065. State v. Perry.**

Trumbull App. No. 2006-T-0078, 2007-Ohio-2050.

**2007-1066. State ex rel. Republic Servs. of Ohio II, LLC v. Bd. of Trustees of Pike Twp.**

Stark App. Nos. 2006 CA 00153 and 2006 CA 00172, 2007-Ohio-2086.

**2007-1067. State v. Glossip.**

Warren App. No. CA2006-04-040, 2007-Ohio-2066.

**2007-1070. State v. Henderson.**

Lake App. No. 2006-L-110, 2007-Ohio-2315.

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

**2007-1071. Estate of Poole v. Conwell.**

Cuyahoga App. No. 88414, 2007-Ohio-2510.

**2007-1074. State v. Blakely.**

Hamilton App. No. C-070323.

**2007-1075. State v. Downard.**

Wood App. No. WD-05-086, 2007-Ohio-2144.

**2007-1077. Wilson v. United Fellowship Club of Barberton.**

Summit App. No. 23241, 2007-Ohio-2089.

**2007-1078. State v. Watson.**

Hamilton App. No. C-070322.

**2007-1084. State v. Worrell.**

Franklin App. No. 06AP-706.

**2007-1088. State v. Brady.**

Cuyahoga App. No. 87854, 2007-Ohio-1453.

**2007-1091. State v. Kemp.**

Franklin App. No. 06AP-824, 2007-Ohio-2219.

**2007-1105. State ex rel. Dann v. Maurer Mobile Home Court, Inc.**

Wood App. No. WD-06-053, 2007-Ohio-2262.

**2007-1106. State v. Price.**

Clermont App. Nos. CA2006-07-052 and CA2006-08-057.

**2007-1112. Jonovich v. E. Cleveland.**

Cuyahoga App. No. 88272, 2007-Ohio-1984.

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

**2007-1116. State v. Pruitt.**

Franklin App. No. 06AP-1184, 2007-Ohio-2331.

**2007-1118. State v. Horn.**

Cuyahoga App. No. 89833.

**2007-1122. State v. Byrd.**

Hamilton App. No. C-060470.

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

**2007-1126. State v. Filchock.**

Lake App. No. 2006-L-122, 2007-Ohio-2574.

**2007-1127. State v. Marino.**

Lake App. No. 2006-L-192, 2007-Ohio-2566.

**2007-1128. State v. Adams.**

Lake App. No. 2006-L-114, 2007-Ohio-2434.

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

**2007-1131. State v. Travis.**

Cuyahoga App. No. 88636, 2007-Ohio-2379.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2006-0882, *State v. Geeslin*, Mercer App. No. 10-05-06, 2006-Ohio-1261.

**2007-1133. State v. Aquino.**

Cuyahoga App. No. 89767.

**2007-1135. State v. Craig.**

Cuyahoga App. No. 88039, 2007-Ohio-1834.

**2007-1137. State v. Reid.**

Montgomery App. Nos. 21499 and 21573, 2007-Ohio-2427.

**2007-1141. Bd. of Commrs. of Hamilton Cty. v. Roudebush.**

Hamilton App. No. C-050872.

**2007-1142. State v. Adames.**

Cuyahoga App. No. 88565, 2007-Ohio-2233.

Cupp, J., dissents and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2007-1254, *State v. Silsby*, Geauga App. No. 2006-G-2725, 2007-Ohio-2308.

**2007-1146. State v. Silvey.**

Lucas App. No. L-05-1254, 2007-Ohio-2535.

**2007-1174. State v. Johnson.**

Franklin App. No. 06AP-67, 2007-Ohio-2385.

**2007-1187. State v. Morris.**

Franklin App. No. 05AP-1032, 2007-Ohio-2382.

Lanzinger, J., dissents and would accept the appeal on Proposition of Law No. III.

**2007-1189. State v. Lather.**

Sandusky App. No. S-03-008, 2007-Ohio-2399.

**2007-1197. Stoneman v. Turner Metal Prods.**

Cuyahoga App. No. 88206, 2007-Ohio-1719. Discretionary appeal not accepted.

Pfeifer, J., dissents and would accept the appeal and hold the cause for the decision in 2006-1647 and 2006-1855, *Charvat v. Ryan*, Franklin App. No. 05AP-1331, 2006-Ohio-3705 and 2006-Ohio-4592.

Motion for admission pro hac vice of Matthew McCue by Joseph R. Compoli Jr. granted.

**2007-1202. State v. Curtis.**

Franklin App. No. 06AP-791, 2007-Ohio-2593.

**2007-1206. Silver v. Silver.**

Clark App. No. 2006 CA 47, 2007-Ohio-2606.

**2007-1218. State v. Kelly.**

Franklin App. No. 06AP-606.

**2007-1524. State v. Roberts.**

Hamilton App. No. C-050279, 2007-Ohio-856.

O'Connor and Lanzinger, JJ., dissent and would accept the appeal on Proposition of Law No. III and hold the cause for the decision in 2007-0325, *State v. Davis*, Hamilton App. No. C-040665, 2006-Ohio-3171.