

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 30, 2009

[Cite as *09/30/2009 Case Announcements*, 2009-Ohio-5031.]

MERIT DECISIONS WITH OPINIONS

2007-2295. State v. Hoover, Slip Opinion No. 2009-Ohio-4993.

Union App. No. 14-07-11, 173 Ohio App.3d 487, 2007-Ohio-5773. Judgment affirmed in part and reversed in part.

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

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

2009-0025. State ex rel. Cordray v. Marshall, Slip Opinion No. 2009-Ohio-4986.

Scioto App. No. 05CA3004, 2008-Ohio-6341. Judgment affirmed.

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

Pfeifer, J., concurs in judgment only.

MERIT DECISIONS WITHOUT OPINIONS

2009-1288. [State ex rel.] Looper v. Ohio State Univ.

In Mandamus. On relator's complaint in mandamus and motion for contempt and respondent's answer. On S.Ct.Prac.R. X(5) determination, cause dismissed. Motion for contempt denied as moot.

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

2009-1293. [State ex rel.] Freeman v. Schneider.

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

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

2009-1299. [State ex rel.] Broadnax v. Wiseman.

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

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

2009-1300. [State ex rel.] Body v. Hall.

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

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

2009-1314. [State ex rel.] Tylicki v. O'Brien.

In Prohibition. On complaint in prohibition or, in the alternative, complaint in mandamus of Raymond Tylicki. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2009-1315. State ex rel. Howe v. Collins.

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

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

O'Donnell, J., dissents and would grant an alternative writ.

2009-1329. State ex rel. Taylor v. McMonagle.

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

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

2009-1335. [State ex rel.] Turns v. Hogan.

In Mandamus. On relator's complaint in mandamus and motion for preliminary injunction and respondents' motion to dismiss. Motion to dismiss granted. Motion for preliminary injunction denied as moot. Cause dismissed.

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

2009-1336. State ex rel. Montgomery v. Court of Appeals, Fifth Appellate Dist.

In Mandamus. On relator's complaint in mandamus and motion for leave to amend complaint and respondent's motion to dismiss. Motion to dismiss granted. Motion for leave to amend complaint denied as moot. Cause dismissed.

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

2009-1400. [State ex rel.] Whiting v. Hall.

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

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

2009-1408. State ex rel. Freshwater v. Mt. Vernon City School Dist. Bd. of Edn.

In Mandamus and Prohibition. On respondents' answer and motion for judgment on the pleadings. Motion for judgment on the pleadings granted. Cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2006-1653. State v. Pruitt.

Cuyahoga App. Nos. 86707 and 86986, 2006-Ohio-4106. On motion to vacate judgment for lack of final, appealable order. Motion denied.

2009-0922. State ex rel. Extencicare Health Servs., Inc. v. Ryan.

In Mandamus. On answer of respondent. Sua sponte, an alternative writ is granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's

brief; and relator may file a reply brief within seven days after filing of respondent's brief.

Relator's request for oral argument is denied.

2009-1292. State ex rel. Doner v. Logan.

In Mandamus. On motion to dismiss. Sua sponte, an alternative writ is granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

Cupp, J., not participating.

2009-1323. Garr v. Warden, Madison Corr. Inst.

Certified Question of State Law, United States District Court, Southern District of Ohio, Western Division, No. 1:08CV293. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question:

“Whether the Supreme Court of Ohio's decision in *State v. Chandler*, 109 Ohio St.3d 223, 2006-Ohio-2285, as described in the syllabus of the court, to wit: ‘[a] substance offered for sale must contain some detectable amount of the relevant controlled substance before a person can be sentenced as a major drug offender under Ohio Revised Code § 2925.03(C)(4)(g),’ extends to cases where the substance offered for sale was never observed, tested, or recovered to ascertain whether it contained a detectable amount of the controlled substance, but no affirmative evidence was presented to call into question the defendant's representation in his offer to sell, or to refute the jury's factual finding, that the substance was in fact a controlled substance in an amount that equaled or exceeded 1000 grams.”

O'Donnell and Lanzinger, JJ., dissent.

2009-1432. State v. McCradic.

Richland App. No. 08-CA-058, 2009-Ohio-2592. On motion for leave to file delayed appeal. Motion granted.

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

2009-1452. State v. Jackson.

Cuyahoga App. No. 92523. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

2009-1458. State v. Anderson.

Fayette App. No. CA2008-07-026, 2009-Ohio-2521. On motion for leave to file delayed appeal. Motion denied.

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

2009-1481. State v. Johnson.

Hamilton App. Nos. C-080156 and C-080158, 2009-Ohio-2568. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated in the court of appeals' Entry filed July 29, 2009:

“Are the elements of child endangering [set forth in R.C. 2919.22(B)(1)] sufficiently similar to the elements of felony murder with child endangering as the predicate offense that the commission of the murder logically and necessarily also results in the commission of child endangering?”

O'Donnell, J., dissents.

The conflict case is *State v. Mills*, Tuscarawas App. No. 2007 AP 07 0039, 2009-Ohio-1849.

2009-1488. State v. Nesbitt.

Hamilton App. No. C-080010, 2009-Ohio-972. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

2009-1490. State v. Howard.

Franklin App. No. 08AP-177, 2009-Ohio-2663. On motion for leave to file delayed appeal. Motion granted.

2009-1491. State v. Vines.

Cuyahoga App. No. 55693. On motion for leave to file delayed appeal. Motion denied.

2009-1520. State v. Kupay-Zimmerman.

Cuyahoga App. No. 92043, 2009-Ohio-3596. On motion to vacate order granting stay. Motion denied.

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

2009-1560. State v. Davis.

Washington App. No. 06CA39, 2007-Ohio-1281. On motion for stay of sentence. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2009-0863. State v. Omiecinski.

Cuyahoga App. No. 90510, 2009-Ohio-1066. Discretionary appeal accepted on Proposition of Law Nos. II, III, IV, and V; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

Moyer, C.J., and Lundberg Stratton, J., would also accept Proposition of Law No. I without holding.

Pfeifer, J., would accept the appeal on Proposition of Law Nos. III and IV only.

O'Donnell, J., would accept the appeal on Proposition of Law Nos. III, IV, and V only.

2009-1014. West v. State.

Hamilton App. No. C-080612. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

2009-1032. Foster v. State.

Hamilton App. No. C-080651. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, IV, V, and VI; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

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

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

Cupp, J., would not accept Proposition of Law No. III.

2009-1069. Barberton v. Jenney.

Summit App. No. 24423, 2009-Ohio-1985. Discretionary appeal accepted on Proposition of Law No. I.

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

2009-1086. Gildersleeve v. State.

Cuyahoga App. Nos. 91515, 91516, 91517, 91518, 91519, 91521, 91522, 91523, 91524, 91525, 91526, 91527, 91528, 91529, 91530, 91531, and 91532, 2009-Ohio-2031. Discretionary appeal accepted; appeal held for the decision in 2008-2502,

State v. Bodyke, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed as to the appeal.

Discretionary cross-appeal accepted. Briefing on the cross-appeal shall proceed in accordance with the Rules of Practice of the Supreme Court of Ohio.

2009-1168. Motorists Mut. Ins. Co. v. Dandy-Jim, Inc.

Cuyahoga App. No. 92023, 2009-Ohio-2270.

O'Donnell, J., would accept the appeal on Proposition of Law No. I only.
Pfeifer and Lanzinger, JJ., dissent.

2009-1196. State v. Bess.

Cuyahoga App. No. 91429, 2009-Ohio-2254.

Pfeifer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2009-0588. State v. Smith.

Trumbull App. No. 2008-T-0023, 2008-Ohio-6998.

2009-0713. State v. Heyne.

Warren App. No. CA2008-05-068.

Pfeifer, J., dissents.

2009-0723. Lasson v. Coleman.

Montgomery App. No. 23262. Discretionary appeal not accepted. Appellee's motion for sanctions denied. Appellant's motion for leave to file memorandum in opposition denied as moot.

Lundberg Stratton, J., would grant the motion for sanctions.

2009-0788. State v. Gilbert.

Cuyahoga App. No. 90856, 2009-Ohio-607.

2009-0898. Howard v. Lawton.

Franklin App. No. 08AP-548, 2009-Ohio-639.

2009-0927. New Concept Hous., Inc. v. United Dept. Stores Co., No. 1, Inc.

Hamilton App. No. C-080504, 2009-Ohio-2259. Discretionary appeal not accepted.

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

Motion to hold case in abeyance denied as moot.

2009-1013. State v. Bullard.

Wayne App. No. 08CA0034, 2009-Ohio-1826.

2009-1016. State v. Turks.

Allen App. No. 1-08-44, 2009-Ohio-1837.

2009-1018. State v. Henry.

Montgomery App. No. 22510, 2009-Ohio-2068.

2009-1028. Zolotarevsky v. Barnett.

Ashtabula App. No. 2009-A-0017, 2009-Ohio-2086. Discretionary appeal not accepted. Appellant's motions to verify, for leave to plead, and to submit exhibits denied as moot.

2009-1030. Wells Fargo Bank, N.A. v. Jordan.

Cuyahoga App. No. 91675, 2009-Ohio-1092.

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

2009-1035. State v. Adams.

Cuyahoga App. No. 91672.

2009-1037. State v. Hotoff-Mota.

Huron App. No. H-09-007.

2009-1040. Keybank Natl. Assn. v. Hanns.

Montgomery App. No. 22692, 2009-Ohio-1935.

2009-1043. State v. Adams.

Montgomery App. No. 22493, 2009-Ohio-2056.

2009-1044. State v. Harris.

Cuyahoga App. No. 91894, 2009-Ohio-1780.

2009-1045. State v. Rodriguez.

Lucas App. No. L-07-1303, 2009-Ohio-2156.

2009-1057. Knoppe v. Applegate.

Delaware App. No. 08 CAG 08 0051, 2009-Ohio-2007.

O'Donnell, J., dissents.

2009-1059. Link v. Matthews.

Allen App. No. 1-08-61, 2009-Ohio-1920.

2009-1080. State v. Goldick.

Montgomery App. No. 22611, 2009-Ohio-2177.

2009-1084. Thayer v. Diver.

Lucas App. No. L-07-1415, 2009-Ohio-2053.

O'Donnell, J., dissents.

2009-1085. State v. Dooley.

Muskingum App. No. CT2008-0055, 2009-Ohio-2095.

2009-1090. Wilson v. Ward.

Medina App. No. 08CA0071-M, 2009-Ohio-2078.

Moyer, C.J., dissents.

2008-1093. Redd v. Sheldon.

Marion App. No. 9-08-61.

2009-1103. Whipps v. Ryan.

Franklin App. Nos. 08AP-838 and 08AP-839, 2009-Ohio-2228.

2009-1110. Estate of Niemi v. Niemi.

Trumbull App. No. 2008-T-0082, 2009-Ohio-2090.

2009-1111. State v. Coleman.

Cuyahoga App. No. 91058, 2009-Ohio-1611.

2009-1116. State v. Clark.

Warren App. No. CA2008-09-113, 2009-Ohio-2101.

2009-1122. State v. Doubrava.

Cuyahoga App. No. 91792, 2009-Ohio-2369.

2009-1123. Great Lakes Property Mgt., Ltd. v. Am. Family Ins. Co.

Cuyahoga App. No. 91887, 2009-Ohio-2041.

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

2009-1125. State v. McGlown.

Lucas App. No. L-07-1163, 2009-Ohio-2160.

2009-1126. State v. Davidson.

Cuyahoga App. No. 91224, 2009-Ohio-2125.

2009-1128. Maghie & Savage, Inc. v. P.J. Dick, Inc.

Franklin App. No. 08AP-487, 2009-Ohio-2164.

2009-1138. Beatley v. Beatley.

Delaware App. No. 08-CA-0028, 2009-Ohio-2168.

2009-1140. State v. Herron.

Cuyahoga App. No. 91362, 2009-Ohio-2128.

2009-1141. Render v. Forest Park Police Dept.

Hamilton App. No. C-080371.

2009-1143. State v. Washington.

Hamilton App. Nos. C-090304 and C-090288.

2009-1152. State v. Scanlon.

Auglaize App. No. 2-08-18, 2009-Ohio-2305.

2009-1153. 1st Natl. Bank v. Mountain Agency, L.L.C.

Clermont App. No. CA2008-05-056, 2009-Ohio-2202.

2009-1155. Karnofel v. State.

Mahoning App. No. 08 MA 120, 2009-Ohio-1016.

2009-1156. State v. Morris.

Franklin App. No. 05AP-1139, 2009-Ohio-2396.

2009-1157. Cleveland v. Alex Solomon Family Ltd. Partnership.

Cuyahoga App. No. 90488, 2009-Ohio-2025.

2009-1158. Progressive Plastics, Inc. v. Levin.

Cuyahoga App. No. 91614, 2009-Ohio-2033.

Pfeifer and O'Donnell, JJ., dissent.

2009-1159. State v. Fanaro.

Licking App. No. 06 CA 00168. Discretionary appeal not accepted. Motion to consolidate denied as moot.

2009-1160. State v. Fanaro.

Licking App. No. 06 CA 00168. Discretionary appeal not accepted. Motion to consolidate denied as moot.

2009-1169. Beatley v. Knisley.

Franklin App. No. 08AP-696, 2009-Ohio-2229.
Moyer, C.J., dissents.

2009-1181. Perkins v. Scottish Rite Valley of Cincinnati Trustees.

Hamilton App. No. C-080809.

2009-1183. State v. Fisher.

Hamilton App. No. C-080497, 2009-Ohio-2258.

2009-1185. Toney v. Norwood.

Hamilton App. No. C-080643.
O'Donnell, J., dissents.

2009-1186. Holbrook v. Brandenburg.

Clark App. No. 2007 CA 106, 2009-Ohio-2320.

2009-1194. Wargo v. Henderson.

Columbiana App. No. 08-CO-21, 2009-Ohio-2443.
Moyer, C.J., and Pfeifer and Lundberg Stratton, JJ., dissent.

2009-1197. State v. Grissom.

Erie App. No. E-08-008, 2009-Ohio-2603.

2009-1203. State v. Robinson.

Cuyahoga App. No. 89136, 2009-Ohio-1679.

2009-1205. State v. Monroe.

Franklin App. No. 08AP-1062, 2009-Ohio-2343.

2009-1207. State v. Reed.

Cuyahoga App. No. 91767, 2009-Ohio-2264.

2009-1210. State v. Hairston.

Franklin App. No. 08AP-735, 2009-Ohio-2346.

Moyer, C.J., and O'Connor, J., dissent and would accept the appeal on Proposition of Law No. VIII and hold the cause for the decision in 2008-2037, *State v. Williams*, Cuyahoga App. No. 89726, 2008-Ohio-5149 and 2008-Ohio-5286.

2009-1212. State v. Chambers.

Hamilton App. No. C-080751.

2009-1222. State v. Mitchell.

Montgomery App. No. 22814, 2009-Ohio-3124.

2009-1224. State v. Harvey.

Cuyahoga App. No. 91299, 2009-Ohio-2385.

2009-1259. State v. Brodbeck.

Franklin App. No. 08AP-134, 2009-Ohio-2594.

2009-1263. State v. Chatman.

Franklin App. No. 08AP-803, 2009-Ohio-2504.

2009-1265. State v. Fikes.

Hamilton App. No. C-060581.

2009-1266. State v. Ervin.

Cuyahoga App. No. 87333, 2009-Ohio-2574.

2009-1269. State v. Johnson.

Hamilton App. No. C-080156, 2009-Ohio-2568.

Moyer, C.J., and Lundberg Stratton and Cupp, JJ., dissent and would accept the appeal on Proposition of Law No. I.

2009-1271. State v. Jackson.

Cuyahoga App. No. 91180, 2009-Ohio-2710.

2009-1273. C&K Indus. Servs., Inc. v. McIntyre, Kahn & Kruse Co., L.P.A.

Cuyahoga App. No. 92233, 2009-Ohio-2373.

Moyer, C.J., and Lundberg Stratton, J., dissent.

2009-1278. State v. Turner.

Scioto App. No. 08CA3234, 2009-Ohio-3114.

2009-1280. State v. Gaughan.

Cuyahoga App. No. 90523, 2009-Ohio-2702.

2009-1291. State v. Feaster.

Summit App. No. 24367, 2009-Ohio-2558.

2009-1313. State v. Freeman.

Cuyahoga App. No. 80720, 2009-Ohio-3065.

2009-1331. State v. Johnson.

Lucas App. No. L-07-1193, 2009-Ohio-45.

2009-1346. State v. Wagner.

Licking App. No. 2008CA00021.

2009-1357. State v. Ellis.

Cuyahoga App. No. 91116, 2009-Ohio-2875.

2009-1360. State v. Addison.

Cuyahoga App. No. 90642, 2009-Ohio-2704.

2009-1370. State v. Friedlander.

Cuyahoga App. No. 90084, 2009-Ohio-3370.

Moyer, C.J., and Lanzinger, J., dissent and would accept the appeal on Proposition of Law No. I.

2009-1437. In re J.B.

Franklin App. No. 08AP-1108, 2009-Ohio-3083.

RECONSIDERATION OF PRIOR DECISIONS

2008-1334. Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth.

Certified Question of State Law, United States Court of Appeals for the Sixth Circuit, No. 07-4035. Reported at ___ Ohio St.3d ___, 2009-Ohio-3601, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

DeGenaro, J., of the Seventh Appellate District, sitting for Lundberg Stratton, J.

2009-0683. In re Guardianship of Hards.

Lake App. No. 2007-L-150, 2009-Ohio-1002. Reported at 122 Ohio St.3d 1479, 2009-Ohio-3625, 910 N.E.2d 478. On motion for reconsideration. Motion denied. Appellants' motions for findings/conclusions, to correct the record, to strike from the records, and for summary judgment and appellee's motion to strike appellants' motion for summary judgment denied as moot.

2009-0842. State v. Hazel.

Franklin App. Nos. 08AP-789 and 08AP-790, 2009-Ohio-880. Reported at 122 Ohio St.3d 1481, 2009-Ohio-3625, 910 N.E.2d 479. On motion for reconsideration. Motion denied.

2009-0897. State v. Fischer.

Summit App. No. 24406, 2009-Ohio-1491. Reported at 122 Ohio St.3d 1482, 2009-Ohio-3625, 910 N.E.2d 480. On motion for reconsideration. The motion for reconsideration is granted to the following extent: The discretionary appeal is accepted on Proposition of Law No. I. The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

Moyer, C.J., and Pfeifer and Lanzinger, JJ., would grant the motion as to all Propositions of Law.

Lundberg Stratton, O'Donnell, and Cupp, JJ., dissent and would deny the motion for reconsideration.