

**SUPREME COURT OF OHIO**

**COLUMBUS**

**ANNOUNCEMENT**

1:00 P.M.

WEDNESDAY

April 1, 1998

**MERIT DOCKET**

**97-2394. Workman v. Carter.**

In Habeas Corpus. On return of writ, motion to strike Exhibit D to respondent's return of writ, and supplemental return of writ. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-145. State ex rel. Johnson v. Glavas.**

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-209. State ex rel. Graham v. McMonagle.**

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-212. State ex rel. Simms v. Fuerst.**

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-228. Fisher v. Ghee.**

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-233. State ex rel. Miller v. Rosemarin.**

In Mandamus. On motion to dismiss or motion for judgment on pleadings. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-234. State ex rel. Wynn v. Court of Appeals, Eighth Dist.**

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-294. State ex rel. Harris v. Clark Cty. Court of Common Pleas.**

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-338. State ex rel. Guilfoil v. Leonard.**

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-363. State ex rel. Manley v. Eastern Area Court, Columbiana Cty.**

In Prohibition. On motion to dismiss and motion for contempt. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-368. Howell v. Mohr.**

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-372. Lytle v. Ohio Adult Parole Bd.**

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**98-393. Poluka v. Anderson.**

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**DISMISSALS, SUA SPONTE, NO SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND DISCRETIONARY  
APPEALS, IF APPLICABLE, NOT ALLOWED**

**97-2367. State v. Davis.**

Delaware App. No. 96CAA11056.

**97-2719. State v. Nelson.**

Stark App. No. 1996CA00320.

**98-5. McMaster v. Akron Hous. Appeals Bd.**

Summit App. No. 18226.

**98-42. State v. Thomas.**

Franklin App. No. 97APA11-1465.

Lundberg Stratton, J., dissents and would allow the cause and hold it for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419.

**98-57. State v. Scott.**

Lucas App. No. L-97-1122.

**98-60. State v. Short.**

Columbiana App. No. 96CO49.

**98-63. Jancuk v. Jancuk.**

Mahoning App. No. 94 C.A. 221.

**98-72. State v. Calvert.**

Guernsey App. No. 96CA40.

**98-74. Gerlach v. Gerlach.**

Franklin App. No. 97APF03-343.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**98-76. Edwards v. Madison Twp.**

Franklin App. No. 97APE06-819.

**98-79. Brkic v. Cleveland.**

Cuyahoga App. No. 72724.

**98-82. Akron v. Linn.**

Summit App. No. 18488.

**98-87. State v. Justice.**

Cuyahoga App. No. 72693.

**98-88. State v. Childers.**

Fairfield App. No. 96CA65.

**98-99. State v. Freshour.**

Pickaway App. No. 97CA20.

**98-102. State v. Mastronardi.**

Erie App. No. E-96-033.

**98-103. State v. Udeck.**

Stark App. No. 1997CA00194.

**98-106. State v. Bates.**

Cuyahoga App. No. 71920.

**98-107. Szarka v. Mt. Sinai Med. Ctr.**

Cuyahoga App. No. 72058.

**98-108. Bedford Hts. v. Nieminen.**

Cuyahoga App. No. 71826.

Douglas and F.E. Sweeney, JJ., dissent.

**98-114. State v. Junkins.**

Pickaway App. No. 97CA1.

**98-116. State v. Larkin.**

Coshocton App. No. 97CA5.

**98-121. Schaffer v. A.O. Smith Harvestore Products, Inc.**

Auglaize App. No. 2-97-15.

**98-122. State v. Grogan.**

Hardin App. No. 6-97-18.

**98-124. State v. Gumm.**

Hamilton App. No. C-960972.

**98-125. State v. Bates.**

Franklin App. No. 97APA02-171.

**98-129. State v. Koch.**

Erie App. No. E-97-005.

Resnick, J., not participating.

**98-131. Dayton v. Esrati.**

Montgomery App. No. 16482.

Douglas, Resnick and Pfeifer, JJ., dissent.

**98-132. State v. Cooper.**

Cuyahoga App. No. 72655.

Lundberg Stratton, J., dissents.

**98-133. Valot v. Southeast Local School Dist. Bd. of Edn.**

Portage App. No. 96-P-0280.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**98-134. State v. Salinas.**

Lake App. No. 96-L-146.

**98-140. State v. Elwood.**

Union App. No. 14-97-32.

Moyer, C.J., Douglas and Pfeifer, JJ., dissent and would hold this cause for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419.

**98-149. State v. Frazier.**

Cuyahoga App. No. 71746.

**98-150. State v. Grove.**

Hamilton App. No. C-960839.

**98-153. Countrymark Coop., Inc. v. Smith.**

Hancock App. No. 5-97-21.

Douglas, J., dissents.

**98-154. State v. Tolbert.**

Hamilton App. No. C-960944.

**98-157. Jacobs v. Cleveland.**

Cuyahoga App. No. 72024.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

**98-159. State v. Apger.**

Cuyahoga App. No. 71787.

**98-160. State v. Black.**

Hamilton App. No. C-960845.

**98-163. State v. Turner.**

Franklin App. No. 97APA05-709.

**98-164. Korn v. Korn.**

Franklin App. No. 97APF07-880.

**98-166. State v. Bailey.**

Franklin App. No. 97APA06-754.

**98-169. State v. Pratka.**

Cuyahoga App. No. 72079.

Lundberg Stratton, J., dissents.

**98-172. Mayes v. Columbus.**

Franklin App. No. 97APE05-597.

Lundberg Stratton, J., dissents.

**98-174. State v. Whittaker.**

Cuyahoga App. No. 71975.

**98-180. State v. Hill.**

Hamilton App. No. C-970966.

**98-181. State v. Atkins.**

Hamilton App. No. C-970982.

**98-182. State v. Mease.**

Franklin App. No. 97APA01-92.

**98-184. State v. Hinton.**

Hamilton App. Nos. C-961096 and C-961097.

**98-191. State v. Barnett.**

Montgomery App. No. 16281.  
Moyer, C.J., dissents.

**98-195. Mears v. Mihalega.**

Trumbull App. No. 97-T-0040.  
Resnick and Pfeifer, JJ., dissent.

**98-210. State v. Owens.**

Lucas App. No. L-97-1020.  
Resnick, J., not participating.

**98-215. State v. Garner.**

Hamilton App. No. C-960995.

**98-221. State v. Hamrick.**

Lucas App. No. L-96-059.  
Lundberg Stratton, J., dissents.  
Resnick, J., not participating.

**98-226. State v. Lawrence.**

Montgomery App. No. 16317.

**98-230. State v. Belcher.**

Cuyahoga App. No. 73577.

**98-231. State v. Frye.**

Hamilton App. No. C-970219.

**98-232. State v. Coleman.**

Franklin App. No. 97APA06-795.

**98-236. State v. Cook.**

Hamilton App. No. C-960252.

**98-239. In re Felton.**

Auglaize App. No. 2-96-21.  
Moyer, C.J., dissents.

**98-244. Kimble v. Troyan.**

Harrison App. No. 487.  
Douglas, J., dissents.

**98-296. State v. Burnette.**

Summit App. No. 18347.

**98-337. Leslie v. Bricely.**

Washington App. No. 97CA10.  
F.E. Sweeney, J., dissents.

**MOTION DOCKET**

**97-1880. Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision.**

Board of Tax Appeals, No. 96-D-1218. On request for argument before full court. Request granted.  
Cook, J., dissents.  
Lundberg Stratton, J., not participating.

**97-1920. Gen. Dynamics Land Sys., Inc. v. Tracy.**

Board of Tax Appeals, Nos. 95-A-443 and 95-A-444. On request for argument before full court. Request granted.  
F.E. Sweeney and Cook, JJ., dissent.

**97-2006. Harsco Corp. v. Tracy.**

Board of Tax Appeals, No. 95-P-595. On request for argument before full court. Request granted.

**97-2039. E. Canton Edn. Assn. v. McIntosh.**

Stark App. No. 96CA0293. On motion for leave to supplement the record. Motion granted.

Pfeifer, J., would grant the motion effective when the court of appeals is finished using the record.

**97-2211. Tongren v. Pub. Util. Comm.**

Public Utilities Commission, No. 95-656-GA-AIR. On motion for leave to intervene of Cincinnati Gas and Electric Company. Motion granted.

Moyer, C.J., not participating.

**97-2411. State v. Evans.**

Hamilton App. No. C-950811. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**97-2492. State v. Snell.**

Seneca App. No. 13-97-20. On motion for appointment of counsel. Motion granted; cause remanded to the court of appeals to appoint Kent David Nord.

Pfeifer and Cook, JJ., dissent.

**97-2571. Am. Mun. Power-Ohio, Inc. v. Pub. Util. Comm.**

Public Utilities Commission, No. 97-383-EL-AEC. On motion for leave to intervene of Elkem Metals Company, L.P., and motion for leave to intervene of Monongahela Power Company. Motions granted.

Moyer, C.J., not participating.

**98-2. State v. Rance.**

Lucas App. No. L-96-277. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue found at page 7 of the court of appeals' Decision and Judgment Entry decided December 5, 1997:

“\*\*\* Finding our decision to be in conflict with decisions of the First, Third and Tenth District Courts of Appeals, we hereby certify the record of this matter to the Supreme Court of Ohio to determine whether the Double Jeopardy Clause[s] of the United States and Ohio Constitutions and R.C. 2941.25 prevent a court from imposing sentences for violations of both the involuntary manslaughter and aggravated robbery statutes.”

The conflict cases are *State v. Thomas* (Dec. 31, 1990), Logan App. No. 8-88-20, unreported, 1990 WL 262265; *State v. Watson* (Sept. 28, 1988), Hamilton App. No. C-870554, unreported, 1988 WL 101214; and *State v. Crabtree* (Dec. 1, 1987), Franklin App. No. 87AP-321, unreported, 1987 WL 26313.

**98-28. AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.**  
Public Utilities Commission, No. 96-336-TP-CSS. On motion for leave to  
intervene of Ameritech Ohio. Motion granted.

Resnick, J., not participating.

**98-68. State ex rel. Nix v. Cleveland.**

In Mandamus. On answer of respondents and *sua sponte* consideration of  
submission for mediation. *Sua sponte*, alternative writ granted.

Pfeifer, Cook and Lundberg Stratton, JJ., would submit this cause to  
the court's pilot mediation program.

**98-91. State v. Elson.**

Stark App. No. 1996CA00142. On motion for leave to file delayed appeal.  
Motion denied.

**98-284. State v. Telthorster.**

Licking App. No. 97CA87. On motion for leave to file delayed appeal.  
Motion granted.

F.E. Sweeney, J., dissents.

**98-290. State v. Filkins.**

Lake App. No. 97-L-225. On motion for leave to file delayed appeal.  
Motion denied.

Pfeifer, J., dissents.

**98-293. State v. Benten.**

Cuyahoga App. No. 70415. On motion for leave to file delayed appeal.  
Motion denied.

**98-300. State v. Williams.**

Hamilton App. No. C-960465. On motion for leave to file delayed appeal.  
Motion denied.

**98-326. State v. Metcalf.**

Warren App. No. CA97-03-023. On motion for leave to file delayed  
appeal. Motion denied.

**98-332. State v. Namish.**

Trumbull App. No. 96-T-5578. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

**98-348. State v. Jordan.**

Lucas App. No. L-96-169. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**98-352. State v. Redwine.**

Cuyahoga App. Nos. 70892 and 70893. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**98-388. State v. Bartis.**

Franklin App. No. 97APA05-600. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause consolidated with 98-175, *State v. Bartis*, Franklin App. No. 97APA05-600, and cause held for the decision in 97-1985, *State v. Cook*, Allen App. No. 1-97-21; briefing schedule stayed.

F.E. Sweeney, J., dissents.

**DISCRETIONARY APPEALS ALLOWED**

**97-2723. Johnson v. BP Chemicals, Inc.**

Allen App. No. 1-97-32. (Appeal of BP Chemicals, Inc.; cross-appeal of Norman A. Johnson.) The discretionary appeal is allowed.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

The discretionary cross-appeal is allowed.

**98-7. State v. Dempsey.**

Cuyahoga App. No. 71479. (Appeal of state of Ohio; cross-appeal of Jack Dempsey.) The discretionary appeal is allowed; *sua sponte*, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

The discretionary cross-appeal is denied.

Pfeifer, J., dissents.

**98-66. State ex rel. Shelton v. Firemen & Policemen's Death Benefit Fund.**

Lorain App. No. 97CA006677.

Douglas, Resnick and Cook, JJ., dissent.

**98-67. Geib v. Triway Local Bd. of Edn.**

Wayne App. No. 97CA0016.

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

**98-81. Cappara v. Schibley.**

Cuyahoga App. Nos. 71070, 71368 and 71399.

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

**98-104. Wagner v. Roche Laboratories.**

Lucas App. No. L-93-277.

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

**98-130. State v. Rance.**

Lucas App. No. L-96-277. Discretionary appeal allowed and cause consolidated with 98-2, *supra*.

Pfeifer, J., dissents.

**98-139. Mikesell v. Farm Credit Serv. of MidAmerica, ACA.**

Coshocton App. Nos. 97CA1 and 97CA2.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**98-162. Desenco, Inc. v. Akron.**

Summit App. No. 18321.

Resnick and F.E. Sweeney, JJ., dissent.

**98-171. Chandler & Assoc., Inc. v. America's Healthcare Alliance, Inc.**

Cuyahoga App. Nos. 71325 and 71832.

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

**98-190. Estate of Weitzel v. Cuyahoga Falls.**

Portage App. No. 97-P-0036. The discretionary appeal is allowed; *sua sponte*, cause held for the decision in 97-1870, *Burger v. Cleveland Hts.*, Cuyahoga App. No. 72675; briefing schedule stayed.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

**98-206. Sasaki v. McKinnon.**

Cuyahoga App. No. 71941.

Cook and Lundberg Stratton, JJ., dissent.

**98-213. FOE Aerie 3958 Huber Hts. v. Ohio Liquor Control Comm.**

Montgomery App. No. 15979. The discretionary appeal is allowed; *sua sponte*, cause held for the decision in 96-1269, *et seq.*, *AL Post 763 v. Ohio Liquor Control Comm.*; briefing schedule stayed.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**DISCRETIONARY APPEALS NOT ALLOWED**

**97-2165. State v. Boynton.**

Cuyahoga App. No. 71097.

**98-48. In re Estate of Islay.**

Trumbull App. No. 97-T-0115.

**98-55. In re Petition for Annexation of 368.08+/- Acres of Land, In Springfield Twp.**

Ross App. No. 96CA2238.

Resnick, J., dissents.

**98-59. Univ. Mednet v. Blue Cross & Blue Shield of Ohio.**

Cuyahoga App. No. 71172.

Douglas, F.E. Sweeney and Lundberg Stratton, JJ., dissent.

**98-62. Fronczak v. Arthur Anderson, L.L.P.**

Franklin App. No. 97APE06-863.

Douglas and Pfeifer, JJ., dissent.

**98-70. Taylor v. Kroger Co.**

Hamilton App. No. C-970204.

**98-77. Shimko v. Lobe.**

Franklin App. No. 96APE11-1555.

Pfeifer and Lundberg Stratton, JJ., dissent.

**98-78. Hill v. Stoney Ridge Inn South Ltd.**

Butler App. No. CA97-05-114.

Douglas, J., dissents.

**98-85. State v. Schoonover.**

Allen App. No. 1-97-54.

**98-86. Bidwell v. Children's Med. Ctr.**

Montgomery App. No. 16402.

**98-109. Woodbridge Ins. Co. v. Vice.**

Seneca App. No. 13-97-32.

Pfeifer, J., dissents.

**98-110. State v. Welch.**

Portage App. No. 97-P-0015.

Lundberg Stratton, J., dissents.

**98-111. King v. W. Res. Group.**

Monroe App. No. 789.

**98-128. Best v. Findlay.**

Hancock App. No. 5-97-22.

Lundberg Stratton, J., would allow on Proposition of Law No. I only.

**98-156. Koch v. Conrad.**

Franklin App. No. 97APE05-663.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**98-158. Murphy v. Kuhn.**

Stark App. No. 96CA0263.

F.E. Sweeney and Pfeifer, JJ., dissent.

Resnick, J., not participating.

**98-161. Trissell v. Bethel Twp. Bd. of Trustees.**

Miami App. No. 97CA35.

**98-176. Colkitt v. Keystone Fin., Inc.**

Licking App. No. 97CA101.

Moyer, C.J., dissents.

**98-185. Silvers v. Elco Steel Co.**

Fayette App. No. CA97-06-016.

Douglas and F.E. Sweeney, JJ., dissent.

**98-186. Henson v. Norfolk Southern Corp.**

Delaware App. No. 97CAE05016.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

**98-193. Gaves v. Cabi.**

Trumbull App. Nos. 96-T-5506, 96-T-5537 and 97-T-0026.

**98-198. Hilliard Properties, Inc. v. Commonwealth Land Title Ins. Co.**

Cuyahoga App. No. 72111.

**98-201. Niles Bd. of Edn. v. Niles Classroom Teachers Assn.**

Trumbull App. No. 96-T-5586.

**98-203. Cattaneo v. Taylor.**

Richland App. No. 97CA45.

**98-204. Heffelfinger v. Heffelfinger.**

Ashland App. No. 97COA01216.

Douglas and Resnick, JJ., dissent.

**98-211. Zemcik v. Lapine Truck Sales & Equip. Co.**

Cuyahoga App. No. 72035.

F.E. Sweeney, J., dissents.

**98-216. Edsall v. Hose Master, Inc.**

Cuyahoga App. No. 72036.

F.E. Sweeney, J., dissents.

**98-248. Billey v. Lakewood.**

Cuyahoga App. No. 71794.

**98-342. Walker v. Capri Ent., Inc.**

Franklin App. No. 97APE05-633.

Douglas and Pfeifer, JJ., dissent.

**RECONSIDERATION DOCKET**

**95-561. State ex rel. Chrysler Corp. v. Indus. Comm.**

Franklin App. No. 93APD12-1717. Reported at 81 Ohio St.3d 158, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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

**96-2311. State v. Keenan.**

Cuyahoga App. No. 67452. Reported at 81 Ohio St.3d 133, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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

**97-844. Ohio Edison Co. v. Pub. Util. Comm.**

Public Utilities Commission, No. 96-406-EL-COI. Reported at 81 Ohio St.3d 1440, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

Dana A. Deshler, Jr., J., of the Tenth Appellate District, sitting for Resnick, J.

Peggy Bryant, J., of the Tenth Appellate District, sitting for Cook, J.

**97-858. Centerior Energy v. Pub. Util. Comm.**

Public Utilities Commission, No. 96-406-EL-COI. Reported at 81 Ohio St.3d 1440, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

Dana A. Deshler, Jr., J., of the Tenth Appellate District, sitting for Resnick, J.

Peggy Bryant, J., of the Tenth Appellate District, sitting for Cook, J.

**97-1836. Key v. Mitchell.**

Trumbull App. No. 96-T-5548. Reported at 81 Ohio St.3d 89, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**97-2403. Guess v. Wilkinson.**

Franklin App. No. 96APE07-977. Reported at 81 Ohio St.3d 1442, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**97-2558. Middletown v. Myers.**

Butler App. No. CA97-04-085. Reported at 81 Ohio St.3d 1453, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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