

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

April 12, 2006

[Cite as *04/12/2006 Case Announcements, 2006-Ohio-1703.*]

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## MERIT DECISIONS WITH OPINIONS

**2003-1904. State v. Ferguson, 2006-Ohio-1502.**

Montgomery C.P. No. 02-CR-0353. Judgment affirmed.

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

**2003-1913. Community First Bank & Trust v. Dafoe, 2006-Ohio-1503.**

Van Wert App. No. 15-03-04. Judgment affirmed.

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

Lundberg Stratton and Lanzinger, JJ., dissent.

**2005-0132. N. Olmsted City School Dist. Bd. of Edn. v. Cleveland Mun. School Dist. Bd. of Edn., 2006-Ohio-1504.**

Cuyahoga App. No. 84372, 2004-Ohio-6422. Judgment affirmed.

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

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

**2005-1889. State ex rel. Grissom v. McGookey, 2006-Ohio-1506.**

Erie App. No. E-05-055, 2005-Ohio-4433. Judgment affirmed.

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

**2005-2201. State ex rel. Pamer v. Collier, 2006-Ohio-1507.**

Medina App. No. 05CA0083-M. Judgment affirmed.

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

## MERIT DECISIONS WITHOUT OPINIONS

**2006-0179. State ex rel. Buoscio v. Court of Appeals, Tenth Appellate Dist.**

In Mandamus. On respondent's answer and motion for judgment on the pleadings. On S.Ct.Prac.R. X(5) determination and consideration of the motion for judgment on the pleadings, cause dismissed.

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

O'Connor, J., not participating.

**2006-0201. State ex rel. Brown v. Court of Appeals, Tenth Appellate Dist.**

In Mandamus. On relator's motion for stay or preliminary injunction of court of appeals proceedings and respondent's motion to dismiss. Motion for stay denied. Motion to dismiss granted. Cause dismissed.

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

**2006-0222. State ex rel. Adams v. Brunner.**

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

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

**2006-0237. State ex rel. Strzala v. Gallagher.**

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

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

**2006-0239. Davis v. Ohio Adult Parole Auth.**

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

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

**2006-0261. State ex rel. Martin v. Konteh.**

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

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

**2006-0273. State ex rel. Langford v. Moore.**

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

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

**MOTION AND PROCEDURAL RULINGS**

**1994-0355. State v. Hill.**

Hamilton App. No. C-920497. On motion to set execution date. Motion granted. Execution to be carried out on Thursday, June 15, 2006.

Resnick and O'Donnell, JJ., dissent.

**2005-0929. Fairchilds v. Miami Valley Hosp., Inc.**

Montgomery App. Nos. 20493 and 20542, 160 Ohio App.3d 363, 2005-Ohio-1712. On motion to dismiss appeal as improvidently accepted. Motion denied.

Resnick, J., dissents.

On motion to strike list of additional authorities. Motion denied.

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

**2005-1121. State ex rel. Moorehead v. Indus. Comm.**

Franklin App. No. 04AP-404, 2005-Ohio-2667. On request for oral argument. Request granted.

**2005-2162. Bellman v. Am. Internatl. Group.**

Lucas App. No. L-03-1301, 163 Ohio App.3d 540, 2005-Ohio-5250. On motion to withdraw of appellee Auto Owners Insurance. Motion granted.

Resnick, J., dissents.

**2006-0216. State v. Tooley.**

Portage App. No. 2004-P-0064, 2005-Ohio-6709. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at pages 2-3 of the court of appeals' Judgment Entry filed January 25, 2006:

"1. Whether the statutory inference provided in R.C. 2907.322(B)(3) renders R.C. 2907.322(A)(5) unconstitutionally overbroad in light of the decision announced in *Ashcroft v. The Free Speech Coalition* [(2002), 535 U.S. 234]?"

“2. Whether R.C. 2907.323(A)(3)’s culpable mental state of recklessness renders this section of the statute unconstitutionally overbroad in light of the decision announced in *Ashcroft v. The Free Speech Coalition*?”

The conflict cases are *State v. Eichorn*, Morrow App. No. 02 CA 953, 2003-Ohio-3145, *State v. Anderson*, 151 Ohio App.3d 422, 2003-Ohio-429, and *State v. Morris*, Wayne App. No. 04CA0036, 2005-Ohio-599.

Sua sponte, cause consolidated with 2006-0105, *State v. Tooley*, Portage App. No. 2004-P-0064, 2005-Ohio-6709.

**2006-0370. State v. Palmer.**

Portage App. No. 2004-P-0106, 2005-Ohio-6710. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals’ Judgment Entry filed February 13, 2006:

“Whether a defendant’s failure to timely respond to the State’s request for reciprocal discovery is a period of delay occasioned by the ‘neglect’ or ‘improper act’ of the defendant that tolls the speedy trial time pursuant to R.C. 2945.72(D), even in the absence of a Crim.R. 16 demand for discovery.”

Resnick and O’Donnell, JJ., dissent.

The conflict case is *State v. Larsen* (Mar. 22, 1995), Medina App. No. 2363-M, 1995 WL 125577.

Sua sponte, cause consolidated with 2006-0022, *State v. Palmer*, Portage App. No. 2004-P-0106, 2005-Ohio-6710.

**2006-0372. State v. Stone.**

Hamilton App. No. C-040323, 2005-Ohio-5206. On motion for leave to file delayed appeal. Motion denied.

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

**2006-0376. State v. Hawkins.**

Hardin App. No. 6-05-12. On motion for leave to file delayed appeal. Motion denied.

Lanzinger, J., dissents.

**2006-0396. State v. Troglin.**

Union App. No. 14-04-41, 2005-Ohio-6562. On motion for leave to file delayed appeal. Motion granted.

Resnick, O’Connor and O’Donnell, JJ., dissent.

**2006-0409. State v. Smith.**

Cuyahoga App. No. 85616, 2005-Ohio-4702. On motion for leave to file delayed appeal. Motion denied.

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

**2006-0436. State v. Turner.**

Franklin App. No. 04AP-364, 2004-Ohio-6609. On motion for leave to file delayed appeal. Motion denied.

**2006-0498. State Farm Mut. Auto v. Reid.**

Cuyahoga App. No. 87729. On motion for stay of court of appeals' judgment. Motion denied.

Resnick, J., dissents.

**2006-0503. In re Foster.**

Cuyahoga App. No. 85716, 2006-Ohio-88. On motion for stay of court of appeals' judgment. Motion granted.

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

**2006-0515. State v. Poling.**

Portage App. No. 2004-P-0044, 2006-Ohio-1008. On motion for stay of court of appeals' judgment. Motion granted.

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

**APPEALS ACCEPTED FOR REVIEW**

**2005-2411. Shaker Heights v. Mosely.**

Cuyahoga App. No. 85227, 2005-Ohio-5433.

Resnick and Pfeifer, JJ., dissent.

**2005-2420. State v. Batchili.**

Lucas App. No. L-04-1039, 2005-Ohio-6001.

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

**2005-2437. Charles v. Mabe.**

Franklin App. No. 05AP-410, 2005-Ohio-6106. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2005-0272, *Fowee v. Wesley Hall, Inc.*, Hamilton App. No. C-040188, 2004-Ohio-7002; and briefing schedule stayed.

Pfeifer, J., dissents.

**2006-0015. State v. Brooke.**

Lake App. No. 2004-L-088, 2005-Ohio-6161.

Resnick and Pfeifer, JJ., dissent.

**2006-0019. State v. Naugler.**

Madison App. No. CA2004-09-033, 2005-Ohio-6274. Discretionary appeal accepted; cause held until further notice by the court; and briefing schedule stayed.

Resnick and O'Connor, JJ., dissent.

**2006-0022. State v. Palmer.**

Portage App. No. 2004-P-0106, 2005-Ohio-6710. Discretionary appeal accepted and cause consolidated with 2006-0370, *State v. Palmer*, Portage App. No. 2004-P-0106, 2005-Ohio-6710.

O'Donnell, J., dissents.

**2006-0034. Preferred Capital, Inc. v. Ferris Bros., Inc.**

Summit App. Nos. 22581, 22604, 22605, 22606, 22607, 22608, 22609, 22610, 22611, 22612, 22613, 22614, 22615, 22616, 22617, 22618, and 22619, 2005-Ohio-6221. Discretionary appeal accepted; cause held for the decision in 2005-2134, *Preferred Capital, Inc. v. Power Eng. Group, Inc.*, 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; and briefing schedule stayed.

Resnick, J., dissents.

**2006-0105. State v. Tooley.**

Portage App. No. 2004-P-0064, 2005-Ohio-6709. Discretionary appeal accepted and cause consolidated with 2006-0216, *State v. Tooley*, Portage App. No. 2004-P-0064, 2005-Ohio-6709.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2005-1892. State v. Smith.**

Cuyahoga App. No. 86565.

**2005-2254. Schuerger v. Clevenger.**

Cuyahoga App. Nos. 85128 and 85129, 2005-Ohio-5333. Discretionary appeal and cross-appeal not accepted.

**2005-2386. Manchester, Bennett, Powers & Ullman, LPA v. Anu & Amu, Inc.**

Mahoning App. No. 05 MA 143.

**2005-2390. State v. Huffman.**

Wood App. No. WD-05-007, 2005-Ohio-6005.

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

**2005-2391. State v. Bronston.**

Cuyahoga App. No. 87254.

**2005-2402. State v. Dennison.**

Franklin App. No. 05AP-124, 2005-Ohio-5837.

**2005-2403. Leibold v. Leibold.**

Union App. No. 14-05-16, 2005-Ohio-5893.

Resnick, J., dissents.

**2005-2406. State v. Myers.**

Franklin App. No. 05AP-228, 2005-Ohio-5998.

**2005-2407. State v. Freeman.**

Marion App. No. 9-04-65, 2005-Ohio-5892.

**2005-2413. State v. Sears.**

Hamilton App. No. C-050150, 2005-Ohio-5963.

Lundberg Stratton, J., dissents.

**2005-2417. Bowling v. Grange Mut. Cas. Co.**

Franklin App. No. 05AP-51, 2005-Ohio-5924.

O'Donnell, J., dissents.

**2005-2419. State v. Conley.**

Medina App. No. 05CA0057-M, 2005-Ohio-6218.

**2005-2422. State v. Rettig.**

Henry App. No. 7-05-09.

**2005-2423. Spiegel v. Westafer.**

Union App. No. 14-05-18, 2005-Ohio-6033.

Resnick, J., dissents.

**2005-2424. Pollard v. Hunt.**

Montgomery App. No. 20876, 164 Ohio App.3d 353, 2005-Ohio-5962.  
O'Donnell, J., dissents.

**2005-2427. Jordan v. Jordan.**

Hancock App. No. 5-05-24, 2005-Ohio-6028.  
O'Donnell, J., dissents.

**2005-2429. State v. Ficzeri.**

Lake App. No. 2004-L-147, 2005-Ohio-6073.

**2005-2430. Chambers v. Bur. of Workers' Comp.**

Summit App. No. 22538, 164 Ohio App.3d 397, 2005-Ohio-6086. Discretionary appeal not accepted.

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

On motion for admission pro hac vice of Carl E. Patrick by Joseph T. Dattilo for Montrose Ford, Inc. Motion granted.

**2005-2431. Kinasz-Reagan v. Ohio Dept. of Job & Family Servs.**

Cuyahoga App. No. 85768, 164 Ohio App.3d 458, 2005-Ohio-5848.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

**2005-2433. Dandrew v. Silver.**

Cuyahoga App. No. 86089, 2005-Ohio-6355.

**2005-2435. State v. Chatman.**

Hamilton App. No. C-050853.

**2005-2438. Zigler v. AVCO Corp.**

Williams App. No. WM-04-011, 2005-Ohio-6130.

Moyer, C.J., dissents.

O'Donnell and Lanzinger, JJ., dissent and would accept the discretionary appeal on Proposition of Law Nos. I and II.

**2005-2439. State v. Barron.**

Perry App. No. 05 CA 4, 2005-Ohio-6108.  
Pfeifer, J., dissents.

**2005-2443. Ullmann v. Duffus.**

Franklin App. No. 05AP-299, 2005-Ohio-6060.  
O'Donnell, J., dissents.

**2006-0001. State v. Morris.**

Franklin App. No. 05AP-1139, 2005-Ohio-6479.

**2006-0002. Samman v. Nukta.**

Cuyahoga App. No. 85739, 2005-Ohio-5444.

**2006-0004. State v. Nelms.**

Franklin App. No. 05AP-1056.

**2006-0008. Wollman v. Cleveland.**

Cuyahoga App. No. 85548, 2005-Ohio-5436.

Resnick, J., dissents.

**2006-0010. Humphries v. C.B. Richard Ellis, Inc.**

Franklin App. No. 05AP-483, 2005-Ohio-6105.

**2006-0011. Galbraith v. J.J. Detweiler Ent., Inc.**

Guernsey App. No. 2004CA16, 164 Ohio App.3d 332, 2005-Ohio-6300.

**2006-0013. Diquattro v. Stellar Group, Inc.**

Medina App. No. 04CA0095-M, 2005-Ohio-6457.

Resnick and Pfeifer, JJ., dissent.

**2006-0014. Anderson v. Tatro Brothers, Inc.**

Clermont App. No. CA2005-07-057.

**2006-0016. Ford Motor Credit Co. v. Foster.**

Cuyahoga App. No. 85623, 2005-Ohio-6091.

**2006-0017. Mudgett v. Ohio State Bd. of Emergency Med. Servs.**

Union App. No. 14-05-10, 2005-Ohio-6171.

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

**2006-0021. Ortiz v. United States Fid. & Guar. Co.**

Cuyahoga App. No. 85966, 2005-Ohio-5982.

Pfeifer, J., dissents.

**2006-0023. Cousino v. Stewart.**

Fulton App. Nos. F-05-004 and F-05-011, 2005-Ohio-6245.

Moyer, C.J., dissents.

**2006-0026. State ex rel. Dawson v. Richmond Heights.**

Cuyahoga App. No. 86018, 2005-Ohio-5991.

**2006-0028. State v. Ratliff.**

Columbiana App. No. 05 CO 61.

**2006-0029. State v. Wills.**

Hamilton App. No. C-050372.

**2006-0036. State v. Wilbur.**

Franklin App. Nos. 05AP-960 and 05AP-961, 2005-Ohio-6213.

**2006-0037. Cincinnati v. Queen City Lodge No. 69, Fraternal Order of Police.**

Hamilton App. No. C-050143, 164 Ohio App.3d 408, 2005-Ohio-6225.

**2006-0039. Burns v. Ohio Dept. of Job & Family Servs.**

Trumbull App. Nos. 2004-T-0071 and 2004-T-0072, 2005-Ohio-6290.

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

**2006-0040. State v. Wimbush.**

Richland App. No. 2005CA0024, 2005-Ohio-6436.

**2006-0041. Furnier & Thomas, LLP v. Business Information Solution, Inc.**

Hamilton App. No. C-040709.

Moyer, C.J., dissents.

**2006-0054. State v. Sawyer.**

Cuyahoga App. No. 85911, 2005-Ohio-6486.

**2006-0057. Mills v. Union Twp. Bd. of Zoning Appeals.**

Clermont App. No. CA2005-02-013, 2005-Ohio-6273.

**2006-0069. Christner v. Christner.**

Butler App. No. CA2005-02-024.

**2006-0076. State v. Ibn-Ford.**

Summit App. No. 22726.

**2006-0084. Dayton v. AFSCME, Ohio Council 8.**  
Montgomery App. No. 21092, 2005-Ohio-6392.  
Lundberg Stratton and O'Donnell, JJ., dissent.

**2006-0093. State v. Hatter.**  
Hamilton App. No. C-040840.

**2006-0095. Sarka v. Love.**  
Cuyahoga App. No. 85960, 2005-Ohio-6362.  
Lundberg Stratton and O'Donnell, JJ., dissent.

**2006-0116. State v. Walker.**  
Hamilton App. No. C-050921.

**2006-0118. State v. Wahid.**  
Summit App. No. 22956.

**2006-0158. State v. Baker.**  
Summit App. No. 23008.

**2006-0161. State v. Hall.**  
Clark App. No. 05CA0006, 2005-Ohio-6672.

**2006-0167. State v. Ross.**  
Ashtabula App. No. 2003-A-0096, 2005-Ohio-6575.  
O'Connor, J., not participating.

**2006-0191. State v. Thomas.**  
Hamilton App. No. C-050245, 2005-Ohio-6823.

**2006-0240. State v. McHale.**  
Montgomery App. No. 18963, 2002-Ohio-2373.

**2006-0341. State v. Gordon.**  
Stark App. No. 2005CA00031, 2005-Ohio-3638.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2004-1568. State v. Foster.**

Licking App. No. 03CA95, 2004-Ohio-4209. Reported at \_\_\_ Ohio St.3d \_\_\_, 2006-Ohio-856, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**2004-1771. State v. Quinones.**

Cuyahoga App. No. 83720, 2004-Ohio-4485. Reported at \_\_\_ Ohio St.3d \_\_\_, 2006-Ohio-856, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

**2005-2076. Telxon Corp. v. Smart Media of Delaware, Inc.**

Summit App. Nos. 22098 and 22099, 2005-Ohio-4931. Reported at 108 Ohio St.3d 1473, 2006-Ohio-665, 842 N.E.2d 1053. On motion for reconsideration of Smart Media of Delaware, Inc. and William J. Dupree. Motions denied.

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

**2005-2138. State v. Abshear.**

Clark App. No. 03CA0012, 2004-Ohio-1322. Reported at 108 Ohio St.3d 1474, 2006-Ohio-665, 842 N.E.2d 1054. On motion for reconsideration. Motion denied.

**2005-2238. State v. Lockett.**

Cuyahoga App. No. 85677, 2005-Ohio-5199. Reported at 108 Ohio St.3d 1475, 2006-Ohio-665, 842 N.E.2d 1054. On motion for reconsideration. Motion denied.

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