

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

September 24, 2003

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### MERIT DECISIONS WITH OPINIONS

**1993-1418 and 1996-1977. In re Bustamante, 2003-Ohio-4828.**

Reinstatement denied, request for exception denied, and motion denied.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.

O'Donnell, J., not participating.

**2002-0247. State ex rel. Mahoney v. Team Am. 3, Inc., 2003-Ohio-4830.**

Franklin App. No. 01AP-374. Judgment reversed and order reinstated.

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

Resnick and Pfeifer, JJ., dissent.

F.E. Sweeney, J., dissents.

**2002-0585. Klein v. Leis, 2003-Ohio-4779.**

Hamilton App. Nos. C-020012, C-020013, C-020015 and C-020021, 146 Ohio App.3d 526, 2002-Ohio-1634, 767 N.E.2d 286. Judgment reversed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer and Knepper, JJ., concur.

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

Richard W. Knepper, J., of the Sixth Appellate District, sitting for Cook, J.

**2002-0631. State ex rel. Coach v. Indus. Comm., 2003-Ohio-4699.**

Franklin App. No. 01AP-615. Judgment affirmed consistent with the opinion of the court of appeals.

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

Resnick, J., concurs in part and dissents in part.

O'Connor, J., dissents.

O'Donnell, J., not participating.

**2002-0925. State v. Lucas, 2003-Ohio-4778.**

Licking App. No. 01CA00100, 147 Ohio App.3d 297, 2002-Ohio-2514, 770 N.E.2d 114. Judgment reversed.

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

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

Mark L. Pietrykowski, J., of the Sixth Appellate District, sitting for Cook, J.

**2002-1349. Hooten v. Safe Auto Ins. Co., 2003-Ohio-4829.**

Hamilton App. No. C-010576. Judgment reversed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Grady, Lundberg Stratton and O'Connor, JJ., concur.

Thomas J. Grady, J., of the Second Appellate District, sitting for Cook, J.

**2002-1544. State ex rel. Hawkins v. Indus. Comm., 2003-Ohio-4765.**

Franklin App. No. 01AP-1345, 2002-Ohio-3721. Judgment affirmed.

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

**2002-1574. State ex rel. Wilson v. Indus. Comm., 2003-Ohio-4832.**

Franklin App. No. 01AP-928, 2002-Ohio-4289. Judgment affirmed.

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

**2002-1722 and 2002-1723. State v. Newman, 2003-Ohio-4754.**

Summit App. No. 20981, 2002-Ohio-4250. Judgment reversed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

O'Connor, J., concurs separately.

Lundberg Stratton, J., dissents.

O'Donnell, J., not participating.

**2002-1877. State ex rel. Wheeling-Pittsburgh Steel Corp. v. Indus. Comm., 2003-Ohio-4831.**

Franklin App. No. 01AP-1285, 2002-Ohio-4854. Judgment affirmed.

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

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

**2002-1974. State v. Dade, 2003-Ohio-4755.**

Franklin App. No. 02AP-73, 2002-Ohio-5251. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

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

O'Donnell, J., not participating.

**2002-2084. State ex rel. Dismuke v. Indus. Comm., 2003-Ohio-4775.**

Franklin App. No. 02AP-7, 2002-Ohio-6025. Judgment affirmed consistent with the opinion of the court of appeals.

Moyer, C.J., Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

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

O'Connor, J., dissents.

**2002-2237. Disciplinary Counsel v. Baumgartner, 2003-Ohio-4756.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-86.

Elsebeth M. Baumgartner, Attorney Registration No. 0064583, is permanently disbarred.

Moyer, C.J., Kline, F.E. Sweeney, Pfeifer, Fain, Lundberg Stratton and O'Connor, JJ., concur.

Roger L. Kline, J., of the Fourth Appellate District, sitting for Resnick, J.

Mike Fain, J., of the Second Appellate District, sitting for Cook, J.

**2003-0039. State ex rel. Warnock v. Indus. Comm., 2003-Ohio-4833.**

Franklin App. No. 02AP-359, 2002-Ohio-6739. Judgment affirmed.

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

**2003-0627. State ex rel. Ahmed v. Costine, 2003-Ohio-4776.**

Belmont App. No. 02-BE-55, 2002-Ohio-7174. Judgment reversed and cause remanded.

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

**2003-0670. Caudill v. Brigano, 2003-Ohio-4777.**

Warren App. No. CA2003-02-016. Judgment affirmed.

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

## MERIT DECISIONS WITHOUT OPINIONS

### **2003-1264. State v. Greene.**

Franklin App. No. 02AP-1247, 2003-Ohio-2832. On review of order certifying a conflict. The court determines that no conflict exists. This cause is therefore dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer and O'Connor, JJ., concur.

Lundberg Stratton and O'Donnell, JJ., dissent, would accept, and would hold this cause for the decision in *Klein v. Leis*, Hamilton App. Nos. C-020012, C-020013, C-020015 and C-020021, 146 Ohio App.3d 526, 2002-Ohio-1634.

### **2003-1280. State ex rel. Cruse v. Tenth Dist. Court of Appeals.**

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

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

### **2003-1289. State ex rel. Chaney v. Ruehlman.**

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

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

### **2003-1342. State ex rel. Clarke v. Flannery.**

In Mandamus and Prohibition. On answer of respondent Hon. James L. Flannery and motion to dismiss of Barry A. Sullivan, Warren County Inspector/Supervisor, and Board of County Commissioners. Motion to dismiss sustained. Cause dismissed.

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

### **2003-1354. State ex rel. Beacon Journal Publishing Co. v. Akron.**

Summit App. No. 21116. Sua sponte, it hereby ordered that the cause be, and hereby is, dismissed for lack of a final appealable order. See *Ft. Frye Teachers Assn. v. Ft. Frye Local School Dist. Bd. of Edn.* (1993), 87 Ohio App.3d 840, 843, 623 N.E.2d 232; see, also, *State ex rel. Cincinnati Enquirer v. Krings* (2001), 93 Ohio St.3d 654, 656-657, 758 N.E.2d 1135.

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

**2003-1421. Kidd v. Tanner.**

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

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

**2003-1455. Turner v. Burnside.**

In Habeas Corpus. On petition for writ of habeas corpus of John L. Turner Jr. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**1998-2449. State v. Issa.**

Hamilton C.P. No. B9709438. On application for reopening under S.Ct.Prac.R. XI(5). Motion denied.

Pfeifer, J., dissents.

**2001-1325. State ex rel. Shemo v. Mayfield Hts.**

In Mandamus. On relators' motion for order of contempt of writ and for sanctions.

IT IS HEREBY ORDERED by the court that respondent city of Mayfield Heights show cause why it should not be held in contempt of court. Any evidence the parties intend to present on the contempt issue is due within twenty days; respondent city's brief is due within ten days after the submission of evidence; relators' brief is due within twenty days after the filing of respondent city's brief; and respondent city's reply brief is due within five days after the filing of relators' brief.

**2003-1028. Heidt v. Fed. Ins. Co.**

Stark App. No. 2002CA00314, 2003-Ohio-1785. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2003-0925, *Heidt v. Fed. Ins. Co.*, Stark App. No. 2002CA00314, 2003-Ohio-1785; causes held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

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

**2003-1049. State v. White.**

Guernsey App. No. 02CA23, 2003-Ohio-2289. 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' Judgment Entry filed May 27, 2003:

“Appellant’s motion to certify a conflict with *State v. Costa* (September 3, 1999), Greene App. No. 99CA0014 [1999 WL 957647], is overruled. Appellant’s motion to certify a conflict with *State v. Clark*, Fourth District, No. 02-CA-62, 2002-Ohio-6684, is granted. We certify the following question to the Supreme Court:

“Pursuant to R.C. 2949.14 and R.C. 2947.23, may a trial court assess court costs against an indigent defendant convicted of a felony, as part of the sentence?”

O’Donnell, J., dissents.

Sua sponte, cause consolidated with 2003-1048, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

**2003-1081. Gilchrist v. Gonsor.**

Cuyahoga App. No. 80944, 2003-Ohio-2297. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2003-1092, *Gilchrist v. Gonsor*, Cuyahoga App. No. 80944, 2003-Ohio-2297; causes held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; and briefing schedule stayed.

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

**2003-1145. Weaver v. Edwin Shaw Hosp.**

Tuscarawas App. No. 2001AP070070, 2003-Ohio-2488. On review of order certifying a conflict. The court determines that a conflict exists.

The parties are to brief the issue stated at page 2 of the court of appeals' Journal Entry filed June 18, 2003:

“Is the statute of limitations tolled pursuant to R.C. 2305.16 for an incompetent individual once a guardian has been approved?”

F.E. Sweeney, J., dissents.

Sua sponte, cause consolidated with 2003-1055, *Weaver v. Edwin Shaw Hosp.*, Tuscarawas App. No. 2001AP070070, 2003-Ohio-2488.

The conflict case is *McManus v. Belcher* (Jan. 13, 1995), Lucas App. No. L-94-032, 1995 WL 12145.

**2003-1159. Universal Underwriters Ins. Co. v. Estate of Miller.**

Stark App. No. 2002CA00225, 2003-Ohio-2489. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2003-1122, *Universal Underwriters Ins. Co. v. Estate of Miller*, Stark App. No. 2002CA00225, 2003-Ohio-2489; causes held for the decision in 2002-0610, *Geren v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; and briefing schedule stayed.

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

**2003-1238. Carroll v. Dairy Farmers of Am., Inc.**

Auglaize App. No. 2-03-20. On motion for stay of proceedings in the Court of Common Pleas, Auglaize County, Ohio, pending ruling on discretionary appeal. Motion denied.

**2003-1317. State v. Metz.**

Sandusky App. No. S-00-028. On motion for leave to file delayed appeal. Motion denied.

**2003-1370. State v. Lemaster.**

Pickaway App. No. 02CA20, 2003-Ohio-4557. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2003-1373. State v. Bailey.**

Cuyahoga App. No. 82599. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**2003-1380. State v. Brooks.**

Summit App. No. 21360, 2003-Ohio-3143 and 2003-Ohio-3364. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Journal Entry filed July 15, 2003:

“Whether or not R.C. 2929.15, second sentence, read *in pari materia* with R.C. 2929.19(B)(5), second sentence, requires that a court sentencing a defendant to a community control sanction must, at the time of such sentencing, notify the defendant of the specific prison term it may impose for a violation of such sanction, as a prerequisite to imposing a prison term on the defendant for such a violation.”

The conflict cases are *State v. McPherson* (2001), 142 Ohio App.3d 274, 755 N.E.2d 426; *State v. Grodhaus* (2001), 144 Ohio App.3d 615, 761 N.E.2d 80; *State v. Giles*, 1st Dist. No. C-010582, 2002-Ohio-3297, 2002 WL 1393559; and *State v. Bradley*, 151 Ohio App.3d 341, 2003-Ohio-216, 784 N.E.2d 134.

**2003-1391. State v. Freeman.**

Hamilton App. No. C-020233. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2003-1420. State v. Gatlin.**

Summit App. No. 20361. On motion for leave to file delayed appeal. Motion denied.

**2003-1423. State v. Green.**

Mahoning App. No. 01CA54, 2003-Ohio-3074. On motion for leave to file delayed appeal. Motion granted.

Resnick, F.E. Sweeney and O'Connor, JJ., dissent.

**2003-1424. State v. Valentine.**

Franklin App. No. 02AP-1220, 2003-Ohio-2664. On motion for leave to file delayed appeal. Motion granted.

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

**2003-1441. State v. Roberts.**

Trumbull C.P. No. 01CR793. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2003-1457. State v. Kirby.**

Butler App. No. CA2002-06-136, 2003-Ohio-2922. On motion for leave to file delayed appeal. Motion denied.

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

**2003-1511. Washington v. Tyson-Parker.**

Lorain App. No. 03CA008301. On motion for emergency bond. Motion denied.

## APPEALS ACCEPTED FOR REVIEW

### **2003-0922. State v. Conese.**

Butler App. No. CA2002-06-148, 2003-Ohio-1769. Discretionary appeal allowed on Proposition of Law No. I.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., concur but would also allow all other propositions of law.

F.E. Sweeney and O'Donnell, JJ., dissent.

Resnick, J., not participating.

### **2003-0925. Heidt v. Fed. Ins. Co.**

Stark App. No. 2002CA00314, 2003-Ohio-1785. Discretionary appeal allowed; cause consolidated with 2003-1028, *Heidt v. Fed. Ins. Co.*, Stark App. No. 2002CA00314, 2003-Ohio-1785; causes held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

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

### **2003-0938. Wheeler v. W. Res. Mut. Cas. Co.**

Wayne App. No. 02CA0043, 2003-Ohio-1806. Discretionary appeal allowed on Propositions of Law Nos. I and II.

Resnick, J., concurs but would also hold Proposition of Law No. I for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; and would also hold Proposition of Law No. II for decision on *Ferrando v. Auto-Owners Mut. Ins. Co.*, 98 Ohio St.3d 186, 2002-Ohio-7217, 781 N.E.2d 927.

F.E. Sweeney and O'Donnell, JJ., would allow all propositions of law without holding.

O'Connor, J., would allow all propositions of law and hold for the decision in *Burkhart*.

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

### **2003-0942. Gates v. Nationwide Ins. Co.**

Clermont App. No. CA2002-10-086, 2003-Ohio-1773. Discretionary appeal allowed; cause held for the decision in 2002-1126 and 2002-1433, *Allen v. Johnson*, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404; and briefing schedule stayed.

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

**2003-0957. Lipstreu v. The Hartford.**

Cuyahoga App. No. 81515, 2003-Ohio-1729 and 2003-Ohio-1955. Discretionary appeal allowed on Proposition of Law No. III.

O'Connor and O'Donnell, JJ., concur but would also hold on Proposition of Law No. III for the decision in 2003-0362, *Taylor v. Kemper Ins. Co.*, Cuyahoga App. No. 81360, 2003-Ohio-177.

Moyer, C.J., would allow all propositions of law and hold for *Taylor*.

Lundberg Stratton, J., would allow all propositions of law without holding.

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

**2003-0967. Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision.**

Cuyahoga App. No. 81507, 2003-Ohio-1728.

Resnick, F.E. Sweeney and O'Donnell, JJ., dissent.

**2003-0972. Shanabarger v. Hartford Ins. Co.**

Hancock App. No. 5-02-61, 2003-Ohio-1912. Discretionary appeal allowed; cause held for the decision in 2002-0610, *Geren v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; and briefing schedule stayed.

Resnick and Pfeifer, JJ., dissent.

**2003-1017. Shimko v. Lobe.**

Franklin App. No. 02AP-872, 2003-Ohio-2200.

Resnick, J., dissents.

**2003-1025. State v. Axson.**

Cuyahoga App. No. 81231, 2003-Ohio-2182. Discretionary appeal allowed; cause held for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; and briefing schedule stayed.

Pfeifer, J., would allow but hold for the decision in 2002-0840, *State v. Taylor*, Cuyahoga App. No. 79475, 2002-Ohio-1554.

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

**2003-1048. State v. White.**

Guernsey App. No. 02CA23, 2003-Ohio-2289. Discretionary appeal allowed and cause consolidated with 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

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

**2003-1055. Weaver v. Edwin Shaw Hosp.**

Tuscarawas App. No. 2001AP070070, 2003-Ohio-2488. Discretionary appeal allowed and cause consolidated with 2003-1145, *Weaver v. Edwin Shaw Hosp.*, Tuscarawas App. No. 2001AP070070, 2003-Ohio-2488.

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

**2003-1070. Gabbard v. Ohio Bur. of Workers' Comp.**

Franklin App. Nos. 02AP-1168 and 02AP-976, 2003-Ohio-2265.

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

**2003-1086. Morrison v. Emerson.**

Stark App. No. 2002CA00414, 2003-Ohio-2708. Discretionary appeal allowed; cause held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., concur but would also hold for the decision in 2002-0579, *Burkhart v. CNA Ins Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903.

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

**2003-1092. Gilchrist v. Gonsor.**

Cuyahoga App. No. 80944, 2003-Ohio-2297. Discretionary appeal allowed; cause consolidated with 2003-1081, *Gilchrist v. Gonsor*, Cuyahoga App. No. 80944, 2003-Ohio-2297; causes held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; and briefing schedule stayed.

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

**2003-1107. Davis v. Westfield Cos.**

Lorain App. No. 02CA008114, 2003-Ohio-2339. Discretionary appeal allowed; cause held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

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

**2003-1122. Universal Underwriters Ins. Co. v. Estate of Miller.**

Stark App. No. 2002CA00225, 2003-Ohio-2489. Discretionary appeal allowed; cause consolidated with 2003-1159, *Universal Underwriters Ins. Co. v. Estate of Miller*, Stark App. No. 2002CA00225, 2003-Ohio-2489; causes held for the decision in 2002-0610, *Geran v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; and briefing schedule stayed.

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

## APPEALS NOT ACCEPTED FOR REVIEW

### **2003-0952. State v. Jones.**

Lucas App. No. L-02-1047, 2003-Ohio-1865.

Moyer, C.J., and Lundberg Stratton, J., dissent, would allow, and would hold this cause for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

### **2003-1091. Marshall v. Colonial Ins. Co. of California.**

Trumbull App. No. 2001-T-0145, 2003-Ohio-2367.

Moyer, C.J., and Lundberg Stratton, J., dissent, would allow, and would hold this cause for the decision in 2002-1986, *Shaw v. State Farm Ins. Co.*, Cuyahoga App. No. 80471, 2002-Ohio-5330.

O'Donnell, J., dissents and would allow.

### **2003-1093. Dotterer v. Nationwide Mut. Ins. Co.**

Wayne App. Nos. 02CA0044 and 02CA0051, 2003-Ohio-2348.

Lundberg Stratton, J., dissents and would allow.

O'Donnell, J., dissents, would allow, and would hold this cause for the decision in 2003-0938, *Wheeler v. W. Res. Mut. Cas. Co.*, Wayne App. No. 02CA0043, 2003-Ohio-1806.

### **2003-1096. Stevenson v. Cuyahoga Cty. Community College.**

Cuyahoga App. No. 81637, 2003-Ohio-2191.

Resnick and Pfeifer, JJ., dissent.

### **2003-1100. State v. Walker.**

Hamilton App. No. C-030278.

### **2003-1102. State v. Myers.**

Clark App. No. 02CA73, 2003-Ohio-915.

### **2003-1105. State v. Graves.**

Lucas App. No. L-02-1053, 2003-Ohio-2359.

### **2003-1111. Manlaw Invest. Co. v. Marriott Corp.**

Medina App. No. 02CA0100M, 2003-Ohio-2347.

Moyer, C.J., dissents.

**2003-1113. Immormino v. Abrams.**

Cuyahoga App. No. 81979, 2003-Ohio-3376.

**2003-1116. State v. Bushong.**

Guernsey App. No. 02CA12, 2003-Ohio-2296.

**2003-1119. Toledo v. Moore.**

Lucas App. No. L-02-1288, 2003-Ohio-2362.

**2003-1123. Schriener v. Valv-Trol Co.**

Williams App. No. WM-02-008, 2003-Ohio-2530.

F.E. Sweeney, J., dissents.

**2003-1125. State v. Langston.**

Portage App. No. 2002-P-0041, 2003-Ohio-2542.

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

**2003-1128. State v. Smith.**

Stark App. No. 2002CA00424, 2003-Ohio-2494.

**2003-1130. Petro v. Cuyahoga Cty. Bd. of Commrs.**

Cuyahoga App. No. 81358, 2003-Ohio-2188.

Moyer, C.J., dissents.

**2003-1133. Leisure v. State Farm Mut. Auto. Ins. Co.**

Stark App. Nos. 2002CA00277, 2002CA00313 and 2002CA00330, 2003-Ohio-2491.

**2003-1134. Tradesmen Internatl., Inc. v. Massillon.**

Stark App. No. 2002CA00251, 2003-Ohio-2490.

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

**2003-1136. State v. Kish.**

Lorain App. No. 02CA008146, 2003-Ohio-2426.

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

**2003-1137. Columbus v. Edney.**

Franklin App. No. 02AP-526, 2003-Ohio-2411.

**2003-1139. Berger v. Schwan's Sales.**

Summit App. No. 21493.

F.E. Sweeney, J., dissents.

**2003-1140. State v. Boles.**

Montgomery App. No. 18762, 2003-Ohio-2693.

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

**2003-1141. State v. Dute.**

Hamilton App. No. C-020709, 2003-Ohio-2774.

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

**2003-1144. State v. Valance.**

Marion App. No. 9-03-02, 2003-Ohio-2387.

**2003-1148. Douglas v. Douglas.**

Greene App. No. 2002CA91, 2003-Ohio-2518.

O'Connor, J., would allow on Proposition of Law No. III.

**2003-1149. State v. Kiner.**

Hamilton App. No. C-020596.

**2003-1150. State v. Bailey.**

Cuyahoga App. No. 81498, 2003-Ohio-1834.

**2003-1152. Davison v. Swayze.**

Montgomery App. No. 19516, 2003-Ohio-2517.

**2003-1155. Brunswick v. Dove.**

Medina App. No. 02CA0059M, 2003-Ohio-2424.

**2003-1157. State v. Williams.**

Allen App. No. 1-03-02, 2003-Ohio-2576.

**2003-1163. State v. Williams.**

Cuyahoga App. No. 81364, 2003-Ohio-2656.

F.E. Sweeney, Lundberg Stratton and O'Donnell, JJ., dissent.

**2003-1167. State v. Crayton.**

Cuyahoga App. No. 81257, 2003-Ohio-2299 and 2003-Ohio-4663.

**2003-1168. Bertolini v. Whitehall City School Dist. Bd. of Edn.**

Franklin App. No. 02AP-839, 2003-Ohio-2578.

**2003-1170. Soler v. Evans, St. Clair & Kelsey.**

Franklin App. No. 02AP-802, 152 Ohio App.3d 781, 2003-Ohio-2582.  
Discretionary appeal and cross-appeal denied.

Lundberg Stratton, J., dissents.

**2003-1172. State v. Everitt.**

Warren App. No. CA2002-07-070, 2003-Ohio-2554.

**2003-1173. Strunk v. Truck & Trailer Ent., Inc.**

Fayette App. No. CA2002-08-016.

**2003-1174. Ferry v. Shefchuk.**

Geauga App. No. 2002-G-2480, 2003-Ohio-2535.

O'Connor and O'Donnell, JJ., would allow on Proposition of Law No. I.

Moyer, C.J., would allow.

**2003-1176. Harrison v. Registrar, Bur. of Motor Vehicles.**

Trumbull App. No. 2002-T-0095, 2003-Ohio-2546.

**2003-1177. Ray v. Ray.**

Medina App. No. 02CA0097M.

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

**2003-1179. Fryerson v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 02AP-1216, 2003-Ohio-2730.

**2003-1184. State v. Francis.**

Guernsey App. No. 02CA09, 2003-Ohio-2801.

**2003-1187. Highland Square Mgt., Inc. v. Willis & Linnen Co., L.P.A.**  
Summit App. Nos. 21234 and 21243, 2003-Ohio-2630.

**2003-1189. State v. Draughon.**  
Franklin App. No. 02AP-895, 2003-Ohio-2727.

**2003-1190. Info Leasing Corp. v. Chambers.**  
Hamilton App. Nos. C-020436 and C-020461, 152 Ohio App.3d 715, 2003-Ohio-2670.  
Moyer, C.J., and Pfeifer, J., dissent.

**2003-1191. Cuyahoga Falls v. James.**  
Summit App. No. 21119, 2003-Ohio-531.  
Pfeifer, J., dissents.

**2003-1197. State v. Cureton.**  
Medina App. No. 01CA3219M, 2002-Ohio-5547.

**2003-1201. Switter v. Searle.**  
Medina App. No. 02CA0069M, 2003-Ohio-2715.  
Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., dissent.

**2003-1216. State v. Simpson.**  
Hamilton App. No. C-020698.

**2003-1217. State v. Maxwell.**  
Summit App. No. 21596.

**2003-1219. State v. Wolf.**  
Lake App. Nos. 2000-L-198 and 2000-L-199, 2002-Ohio-6935.

**2003-1227. State v. Smith.**  
Summit App. No. 21069, 2003-Ohio-1306.

**2003-1230. Robinson v. Conrad.**  
Darke App. No. 1604, 2003-Ohio-2961.  
Pfeifer, J., dissents.

**2003-1247. State v. Greene.**

Franklin App. No. 02AP-1247, 2003-Ohio-2832.

Lundberg Stratton and O'Donnell, JJ., dissent, would allow, and would hold this cause for the decision in *Klein v. Leis*, Hamilton App. Nos. C-020012, C-020013, C-020015 and C-020021, 146 Ohio App.3d 516, 2002-Ohio-1634.

**2003-1253. State v. Allen.**

Lorain App. No. 94CA005944.

**2003-1269. State v. Pitzer.**

Hamilton App. Nos. C-030368 and C-030379. Discretionary appeal and motion to consolidate denied.

**2003-1273. Cleary v. Cincinnati.**

Hamilton App. Nos. C-020525 and C-020543.

Resnick and Lundberg Stratton, JJ., dissent.

**2003-1288. State v. Pitzer.**

Hamilton App. No. C-030438. Discretionary appeal and motion to consolidate denied.

**2003-1312. State v. Nesbitt.**

Summit App. No. 20926, 2002-Ohio-4857.

**2003-1314. State v. Roderick.**

Summit App. No. 15503.

**2003-1363. State v. Townsend.**

Franklin App. No. 02AP-510, 2003-Ohio-1327.

**RECONSIDERATION OF PRIOR DECISIONS**

**2002-0001. State ex rel. Clark v. Great Lakes Constr. Co.**

Franklin App. No. 01AP-326. Reported at 99 Ohio St.3d 320, 2003-Ohio-3802, 791 N.E.2d 974. On motion for reconsideration. Motion denied.

O'Donnell, J., not participating.

**2003-0843. Crystal v. Wilsman.**

Cuyahoga App. No. 81055, 151 Ohio App.3d 512, 2003-Ohio-427. Reported at 99 Ohio St.3d 1513, 2003-Ohio-3957, 792 N.E.2d 200. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

**2003-0857. State v. Zuniga.**

Lucas App. No. L-00-1265, 2002-Ohio-5902. Reported at 99 Ohio St.3d 1513, 2003-Ohio-3957, 792 N.E.2d 200. On motion for reconsideration. Motion denied.

**2003-0859. Koukios v. Ganson.**

Hamilton App. Nos. C-010659, C-010735 and C-020091. Reported at 99 Ohio St.3d 1513, 2003-Ohio-3957, 792 N.E.2d 200. On motion for reconsideration. Motion denied.

**2003-1076. State v. Rountree.**

Summit App. No. 15388. Reported at 99 Ohio St.3d 1515, 2003-Ohio-3957, 792 N.E.2d 201. On motion for reconsideration. Motion denied.