

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

December 2, 2015

[Cite as *12/02/2015 Case Announcements*, 2015-Ohio-4947.]

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## MERIT DECISIONS WITH OPINIONS

**2014-0831. State ex rel. DiFranco v. S. Euclid, Slip Opinion No. 2015-Ohio-4914.**

In Mandamus. Writ granted.

O'Connor, C.J., and O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

Pfeifer, J., dissents and would dismiss the petition.

**2014-1761. State ex rel. DiFranco v. S. Euclid, Slip Opinion No. 2015-Ohio-4915.**

Cuyahoga App. No. 97713. Judgment affirmed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

## MERIT DECISIONS WITHOUT OPINIONS

**2015-0975. State ex rel. Keith v. Ohio Dept. of Rehab. & Corr.**

In Mandamus and Habeas Corpus. On petition/complaint for writ of mandamus and habeas corpus of Bernard Keith, motion for appointment of counsel for representation, motion to obtain records pursuant to Ohio Adm.Code 1520:1-1-36(D), request for judicial notice of intent/effort to fully comply with mandates of R.C. 2969.25(C)(1), motion for leave to supplement complaint/pleadings with additional documentary exhibits pursuant to Civ.R. 15, application for peremptory writ and motion to waive prepayment of filing fees with affidavit of financial

disclosure, affidavit of indigency, certification of inmate account and inmate account statement. Motions denied. On consideration of respondent's answer. Cause dismissed.

O'Connor, C.J., and Pfeifer, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

O'Donnell, J., not participating.

**2015-1149. State ex rel. Preston v. Moore.**

In Habeas Corpus. On petition for writ of habeas corpus of Atravion Preston. Sua sponte, cause dismissed. On motion to amend petition for writ of habeas corpus. Motion denied as moot.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2015-1471. Frazier v. Devers.**

Miscellaneous case. On motions to dismiss of Franklin County Court of Common Pleas and Franklin County Municipal Court. Motions granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2015-1509. Smith v. Second Dist. Court of Appeals.**

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

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2015-1523. Amerson v. Marsh.**

In Mandamus. On motion to dismiss of Judge Melba D. Marsh. Motion granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2015-1528. Violation of Civ. Protection Order.**

Miscellaneous case. On motions to dismiss of Franklin County Municipal Court and Franklin County Court of Common Pleas. Motions granted. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

## MOTION AND PROCEDURAL RULINGS

### **2001-0308. Bivens v. State Personnel Bd. of Rev.**

On second amended motion to supplement record. Motion denied.

### **2014-1267. State ex rel. Maddox v. Lincoln Hts.**

On motion for expedited ruling on joint motion for preliminary approval of class-action settlement. Motion denied.

Pfeifer and Kennedy, JJ., dissent.

### **2014-2241. State ex rel. Barton v. Barton.**

On motion for relief from judgment. Motion denied. On motion to dismiss relator's motion for relief from judgment. Motion denied.

### **2015-0393. Anderson v. Cleveland.**

On motion for clarification of the court's decision to dismiss original action and complaint. Motion denied. On motion for amendment for the substitution of two photographs to replace the photograph previously labeled "Attachment II." Motion denied.

### **2015-1419. Smith v. Erie Ins. Co.**

Ottawa App. No. OT-15-005, 2015-Ohio-3078. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 16 of the court of appeals' decision and judgment dated July 31, 2015, as follows:

"The subject of the conflict is the uninsured motorist provision in an auto insurance policy, which states that the testimony of an insured seeking recovery of uninsured motorist benefits does not constitute independent corroborative evidence as required by the policy, unless the testimony is supported by additional evidence. The question to be resolved is whether the policy language is ambiguous leading to an interpretation in favor of the insured that any evidence apart from the insured's testimony, either derived from the insured's testimony or not, is sufficient to constitute 'additional evidence' under the policy, or whether the policy is unambiguous and the 'additional evidence' must be independent of, and not derived from, the insured's testimony."

The conflict case is *Brown v. Philadelphia Indemn. Ins. Co.*, 12th Dist. Warren No. CA2010-10-094, 2011-Ohio-2217.

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

**2015-1556. Metcalf v. Kilzer.**

Athens App. No. 15CA30. On motion to stay and set bond. Motion denied.

**2015-1647. State v. Smith.**

Portage App. No. 2013-P-0083, 2014-Ohio-4300. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2015-1648. Lavin v. Hervey.**

Stark App. No. 2015CA00021, 2015-Ohio-3458. On motion for stay of judgment and motion to waive posting of supersedeas bond. Motions denied.

**2015-1651. State v. Eldridge.**

Scioto App. No. 11CA344, 2012-Ohio-3747. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2015-1653. State v. McManus.**

Cuyahoga App. No. 101922, 2015-Ohio-2393. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Kennedy, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2015-0947. State v. Kent.**

Cuyahoga App. No. 101853, 2015-Ohio-1546. Discretionary appeal accepted and cause held for decision in 2015-0473, *State v. Thomas*, and briefing schedule stayed.

Pfeifer, French, and O'Neill, JJ., dissent.

**2015-0956. State v. Overholser.**

Clark App. No. 2014-CA-42, 2015-Ohio-1980. Discretionary appeal accepted and cause held for decision in 2014-1825, *State v. Marcum*, and briefing schedule stayed.

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

**2015-0994. State v. Bryan.**

Cuyahoga App. No. 101209, 2015-Ohio-1635. Discretionary appeal accepted and cause held for decision in 2015-0473, *State v. Thomas*, and briefing schedule stayed.

Pfeifer, French, and O'Neill, JJ., dissent.

**2015-1107. State v. Anderson.**

Mahoning App. No. 11 MA 43, 2015-Ohio-2029. Discretionary appeal accepted on Proposition of Law No. I only.

Lanzinger, French, and O’Neill, JJ., would also accept the cause on Proposition of Law No. II.

Pfeifer, O’Donnell, and Kennedy, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2014-0794. State v. Noling.**

Portage App. No. 2011-P-0018, 2014-Ohio-1339.

O’Neill, J., not participating.

**2015-0805. Dillon v. OhioHealth Corp.**

Franklin App. Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389. Appeal and cross-appeal not accepted.

O’Donnell, J., dissents and would accept the appeal.

Kennedy and French, JJ., dissent and would accept the appeal and the cross-appeal.

**2015-0825. Harris v. Benjamin Steel Co., Inc.**

Richland App. No. 14 CA 96, 2015-Ohio-1499.

Pfeifer, J., dissents.

**2015-0838. Huntington Natl. Bank v. Stanley Miller Constr. Co.**

Stark App. No. 2014CA00128, 2015-Ohio-1534.

Pfeifer, J., dissents.

**2015-0903. State v. Yapp.**

Cuyahoga App. Nos. 101247 and 101248, 2015-Ohio-1654.

O’Connor, C.J., and O’Donnell and Kennedy, JJ., dissent.

**2015-0909. Spero v. Avny.**

Summit App. No. 27569.

**2015-0916. Castillo v. Ott.**

Lucas App. No. L-14-1248, 2015-Ohio-905.

Pfeifer, O’Donnell, and O’Neill, JJ., dissent.

**2015-0918. Guardo v. Univ. Hosps. Geauga Med. Ctr.**

Gauga App. No. 2014-G-3178, 2015-Ohio-1492.

Pfeifer, J., dissents.

**2015-0922. State v. Brannon.**

Clinton App. No. CA2014-09-012, 2015-Ohio-1488.

Pfeifer and O'Donnell, JJ., dissent.

**2015-0924. State v. Morgan.**

Franklin App. No. 13AP-620.

O'Connor, C.J., dissents and would accept the cause on Proposition of Law Nos. I and II.

French and O'Neill, JJ., dissent.

**2015-0929. In re T.E.**

Franklin App. Nos. 14AP-897 and 14AP-898.

French, J., dissents.

**2015-0941. State v. Moon.**

Cuyahoga App. No. 101972, 2015-Ohio-1550.

**2015-0942. Wemer v. Walker.**

Knox App. No. 14CA20, 2015-Ohio-1713.

**2015-0944. In re M.P.**

Hamilton App. No. C-140373, 2015-Ohio-1533.

O'Neill, J., dissents.

**2015-0945. State v. Loughman.**

Richland App. No. 14CA70, 2015-Ohio-1574.

O'Neill, J., dissents.

**2015-0946. Huntington Natl. Bank v. Miller.**

Franklin App. No. 14AP-716, 2015-Ohio-1558.

**2015-0948. Marcum v. Miami Valley Hosp.**

Montgomery App. No. 26318, 2015-Ohio-1582.

Pfeifer and O'Neill, JJ., dissent.

**2015-0949. Montgomery Cty. v. Deters.**  
Hamilton App. No. C-140266, 2015-Ohio-1507.

**2015-0950. Shelton v. Twin Twp.**  
Preble App. No. CA2014-07-004, 2015-Ohio-1602.

**2015-0951. State v. Czech.**  
Cuyahoga App. No. 100900, 2015-Ohio-1536.

**2015-0960. State v. Slabaugh.**  
Trumbull App. No. 2014-T-0043, 2015-Ohio-1607.

French, J., dissents and would remand the case to the court of appeals for application of *State v. South*, Slip Opinion No. 2015-Ohio-3930.

**2015-0965. State ex rel. Petro vs. Pure Tech Sys., Inc.**  
Cuyahoga App. No. 101447, 2015-Ohio-1638.

**2015-0970. Willis v. Gall.**  
Highland App. No. 14CA9, 2015-Ohio-1696.  
Kennedy, J., dissents.

**2015-0971. State v. Schnitker.**  
Sandusky App. No. S-14-039, 2015-Ohio-1685.

**2015-0978. State v. Thornton.**  
Clermont App. No. CA2014-10-073.  
Pfeifer and O'Neill, JJ., dissent.

**2015-0984. Nationstar Mtge., L.L.C. v. Miller.**  
Ottawa App. No. OT-14-007, 2015-Ohio-1682.  
O'Donnell, J., dissents.

**2015-0992. Partin v. Norwood.**  
Hamilton App. No. C-140461, 2015-Ohio-1616.

**2015-1014. Ohio Dept. of Natural Resources v. Knapke.**  
Mercer App. No. 10-14-03, 2015-Ohio-1691.  
O'Neill, J., dissent.

**2015-1015. Fisher v. Amberly.**

Hamilton App. No. C-140081, 2015-Ohio-2384.

O'Donnell, Kennedy, and O'Neill, JJ., dissent.

**2015-1025. State v. Rucci.**

Mahoning App. No. 14 MA 47, 2015-Ohio-2097.

Pfeifer, J., dissents.

**2015-1026. Lyons v. Kindell.**

Hamilton App. No. C-140160, 2015-Ohio-1709.

**2015-1041. State v. Perez.**

Montgomery App. No. 26518, 2015-Ohio-1753.

**2015-1053. Henderson v. Henderson.**

Allen App. No. 1-14-09, 2015-Ohio-1759.

O'Donnell, J., dissents.

**2015-1069. Archacki v. Dir., Ohio Dept. of Job & Family Servs.**

Cuyahoga App. No. 102258, 2015-Ohio-1849.

**2015-1104. State v. Amin.**

Ashland App. No. 14 COA 17, 2015-Ohio-1902.

O'Donnell, J., dissents.

**2015-1116. Thompson v. Neil.**

Hamilton App. No. C1400476.

**2015-1178. State v. Young.**

Franklin App. No. 14AP-721, 2015-Ohio-2006.

O'Neill, J., dissents.

**2015-1323. State v. Fears.**

Hamilton App. No. C-140680.

**2015-1408. Dilley v. Dilley.**

Geauga App. No. 2014-G-3227, 2015-Ohio-1872.

**2015-1414. State v. Keith.**

Cuyahoga App. Nos. 102106, 102107, and 102108, 2015-Ohio-2401. Motions to consolidate and challenging subject-matter jurisdiction are denied as moot.

**2015-1425. Leal v. Toledo Police Operations.**

Lucas App. No. L-15-1079.

**2015-1442. State v. Stenson.**

Butler App. No. CA2014-07-155, 2015-Ohio-3101.

**2015-1452. State v. George.**

Fairfield App. No. 14 CA 45, 2015-Ohio-3065.

**2015-1454. State v. Smith.**

Cuyahoga App. No. 103075.

**2015-1459. Harper v. Tuscarawas Cty. Job & Family Servs.**

Tuscarawas App. No. 2015 AP 03 0011, 2015-Ohio-3098.

**2015-1460. State v. Leggett.**

Williams App. No. WM-14-004, 2015-Ohio-3296.

**2015-1476. State v. Mitchell.**

Hamilton App. No. C-150289.

**2015-1480. State v. Bailey.**

Hamilton App. No. C-140129, 2015-Ohio-2997.

**2015-1484. Johnson v. Greene Cty. Sanit. Eng.**

Greene App. No. 2014 CA 47, 2015-Ohio-2967.

**2015-1496. State v. West.**

Cuyahoga App. Nos. 102587 and 102613, 2015-Ohio-3354.

**2015-1502. Smith v. Erie Ins. Co.**

Ottawa App. No. OT-15-005, 2015-Ohio-3078.

Lanzinger, Kennedy, and O'Neill, JJ., dissent.

**2015-1514. State v. Henry.**

Crawford App. No. 3-15-01, 2015-Ohio-3720.

**2015-1520. State v. Starkey.**  
Licking App. No. 14-CA-92, 2015-Ohio-3115.

**2015-1522. State v. Patterson.**  
Cuyahoga App. No. 101415, 2015-Ohio-3338.

**2015-1527. State v. Blevins.**  
Hamilton App. No. C-140541.

**2015-1529. State v. Swinson.**  
Clermont App. Nos. CA2015-06-051 and CA2015-06-053.

**2015-1543. State v. Dunn.**  
Cuyahoga App. No. 101648, 2015-Ohio-3138.

**2015-1551. State v. Hysell.**  
Franklin App. No. 15AP-590.

**2015-1558. State v. Deibel.**  
Allen App. No. 1-10-70.

**2015-1560. State v. Brown.**  
Hamilton App. No. C-140645.

**2015-1563. State v. Davis.**  
Hamilton App. No. C-140739.

**2015-1572. State v. Watkins.**  
Franklin App. No. 15AP-703.

**2015-1582. State v. Johnson.**  
Stark App. No. 2015CA00003, 2015-Ohio-3331.

**2015-1584. State v. Gay.**  
Summit App. No. 26487.

**2015-1587. State v. Woods.**  
Hamilton App. No. C-140606.

**2015-1601. State v. Dean.**

Franklin App. Nos. 14AP-173 and 14AP-177, 2015-Ohio-4361.

**2015-1604. State v. Kline.**

Montgomery App. No. 26544, 2015-Ohio-2429.

**2015-1619. State v. Pluhar.**

Cuyahoga App. No. 102012, 2015-Ohio-3344.

**2015-1620. State v. Robinson.**

Franklin App. No. 13AP-563, 2015-Ohio-3486.

**2015-1629. State v. Brown.**

Montgomery App. No. 26219.

**2015-1642. State v. Tate.**

Richland App. No. 15-CA-40, 2015-Ohio-3859.

**2015-1666. State v. White.**

Montgomery App. No. 26093, 2015-Ohio-3512.

**2015-1676. State v. Muzic.**

Summit App. No. 27117.

French, J., dissents.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2013-1651. State v. Conway.**

Franklin App. No. 12AP-412, 2013-Ohio-3741. Reported at 143 Ohio St.3d 1464, 2015-Ohio-3733, 37 N.E.3d 1249. On motion for reconsideration. Motion denied.

French, J., not participating.

**2013-1770. Northeast Ohio Regional Sewer Dist. v. Bath Twp.**

Cuyahoga App. Nos. 98728 and 98729, 2013-Ohio-4186. Reported at \_\_ Ohio St.3d \_\_, 2015-Ohio-3705, \_\_ N.E.3d \_\_. On joint motion for reconsideration and/or motion to remand of city of Brecksville, city of Strongsville, city of Independence, city of Lyndhurst, and city of Beachwood, and motion for reconsideration of Ohio Council of Retail Merchants. Motions denied.

O'Donnell, Kennedy, and French, JJ., dissent.

**2015-0525. State v. Eisermann.**

Cuyahoga App. No. 100967, 2015-Ohio-591. Reported at 143 Ohio St.3d 1478, 2015-Ohio-3958, 38 N.E.3d 900. On motion for reconsideration. Motion denied.

**2015-0536. State v. Wainwright.**

Cuyahoga App. No. 101210, 2015-Ohio-677. Reported at 143 Ohio St.3d 1479, 2015-Ohio-3958, 38 N.E.3d 900. On motion for reconsideration. Motion denied.

**2015-0544. Bank of Am., N.A. v. Duran.**

Lucas App. No. L-14-1031, 2015-Ohio-630. Reported at 143 Ohio St.3d 1479, 2015-Ohio-3958, 38 N.E.3d 900. On motion for reconsideration and motion to strike. Motions denied.

**2015-0988. State v. Ragle.**

Summit App. No. 27538, 2015-Ohio-1523. Reported at 143 Ohio St.3d 1466, 2015-Ohio-3733, 37 N.E.3d 1250. On motion for reconsideration. Motion denied.

**2015-0993. Bank of Am. v. Valentine.**

Delaware App. No. 14 CAE 07 0042, 2015-Ohio-1107. Reported at 143 Ohio St.3d 1466, 2015-Ohio-3733, 37 N.E.3d 1250. On motion for reconsideration. Motion denied.

**2015-1028. State ex rel. Harris v. Richard.**

Madison App. No. CA2015-03-012. Reported at 143 Ohio St.3d 1433, 2015-Ohio-3256, 36 N.E.3d 182. On motion for reconsideration. Motion denied.

O'Donnell and French, JJ., dissent.

**2015-1040. Lavery v. Akron Hous. Appeals Bd., Dept. of Pub. Serv.**

Summit App. No. 27383, 2015-Ohio-1277. Reported at 143 Ohio St.3d 1466, 2015-Ohio-3733, 37 N.E.3d 1251. On motion for reconsideration. Motion denied.

**2015-1128. State v. Victor.**

Geauga App. Nos. 2014-G-3220 and 2014-G-3241. Reported at 143 Ohio St.3d 1481, 2015-Ohio-3958, 38 N.E.3d 901. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.