

The Supreme Court of Ohio

FILED

APR 12 2006

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State of Ohio

Case No. 06-216

v.

ENTRY

Roger L. Tooley, Jr.

This cause is pending before the Court on the certification of a conflict by the Court of Appeals for Portage County. On review of the order certifying a conflict,

IT IS DETERMINED that a conflict exists and it is ordered by the Court that the parties brief the issue stated at pages 2-3 of the court of appeals' judgment entry filed January 25, 2006, as follows:

"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]?"

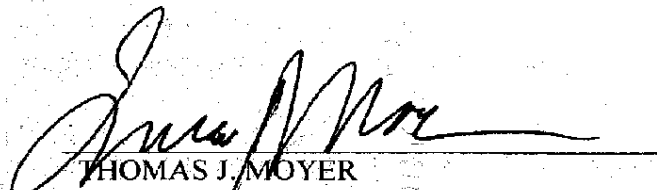
"2. Whether R.C. 2907.323(A)(3)'s culpable mental state of recklessness renders this section of the statute unconstitutionally overbroad in light of the decision announced in *Ashcroft v. The Free Speech Coalition*?"

IT IS ORDERED by the Court, *sua sponte*, that this cause be consolidated with Supreme Court Case No. 06-105, *State v. Tooley*.

IT IS FURTHER ORDERED that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Portage County.

IT IS FURTHER ORDERED that the parties shall combine the briefing of Case Nos. 06-216 and 06-105 and file one brief for each permitted under S.Ct.Prac.R. VI; the parties shall file an original of the brief in each case and 18 copies of the brief; and the parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI.

(Portage County Court of Appeals; No. 2004P0064)



THOMAS J. MOYER
Chief Justice

Exhibit 1

The Supreme Court of Ohio

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MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State of Ohio

Case No. 06-105

v.

ENTRY

Roger L. Tooley, Jr.

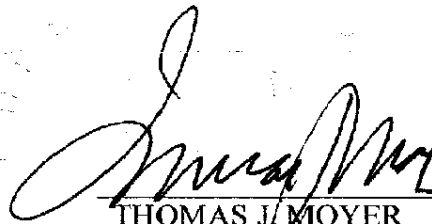
Upon consideration of the jurisdictional memoranda filed in this case, the Court hereby accepts the appeal.

IT IS ORDERED by the Court that this cause be consolidated with Supreme Court Case No. 06-216, *State v. Tooley*.

IT IS FURTHER ORDERED that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Portage County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

IT IS FURTHER ORDERED that the parties shall combine the briefing of Case Nos. 06-105 and 06-216 and file one brief for each permitted under S.Ct.Prac.R. VI; the parties shall file and original of the brief in each case and 18 copies of the brief; and the parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI.

(Portage County Court of Appeals; No. 2004P0064)



THOMAS J. MOYER
Chief Justice