

## Appellate Court Decisions – Week of 12/6/21

*Note: This is not a comprehensive list of every case released this week.*

### First Appellate District of Ohio

#### **State v. Lavender, 2021-Ohio-4274**

Postconviction relief

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2021/2021-Ohio-4274.pdf>

Trial court erred in denying appellant’s petition for postconviction relief “because its findings of fact and conclusions of law denying the petition did not conform with the requirements of R.C. 2953.21(H) and prevent [the COA] from meaningfully reviewing [appellant’s] appeal.” Case remanded with instructions for the trial court to make the appropriate findings and conclusions.

### Second Appellate District of Ohio

#### **State v. King, 2021-Ohio-4229**

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-4229.pdf>

Trial court committed plain error in failing to merge the convictions for felonious assault and domestic violence, as there was no differentiation between the conduct underlying the felonious assault and the conduct underlying the domestic violence.

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

#### **State v. Siegel, 2021-Ohio-4208**

## Suppression

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2021/2021-Ohio-4208.pdf>

Trial court erred in denying appellant's motion to suppress. "[T]he search warrant affidavit that was filed in support of the search warrant for [appellant]'s residence did not establish sufficient probable cause for the warrant to be issued, and because we have further found that a well-trained officer would have known that the search and seizure of the residence was illegal because the search warrant affidavit supporting the search failed to address the issue of the reliability and veracity of the informant, we conclude the trial court erred in denying Siegel's motion to suppress evidence . . . ." Therefore, the good faith exception did not apply.

## Fifth Appellate District of Ohio

### *State v. Bengel, 2021-Ohio-4226*

## Suppression

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-4226.pdf>

Trial court did not err in granting appellant's motion to suppress the search of his vehicle where the officers had no reasonable suspicion of a traffic violation. The record contained competent, credible evidence to support the trial court's conclusion that the testimony of the police officers was not credible. The dash-cam video did, however, definitively show there was no traffic violation of failing to stop at a stop bar.

### *State v. Bush, 2021-Ohio-4269*

## Jury instructions

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-4269.pdf>

Trial court committed plain error where the jury instructions and verdict form submitted to the jury on the failure to stop after an accident charge were insufficient to support a second-degree felony. "Because a finding that the accident resulted in the death of a person and/or that [a]ppellant

knew that the accident resulted in the death of a person is necessary to elevate the offense to a third-degree felony or second-degree felony, respectively . . . the special findings attendant to the verdict form were insufficient.” The form did not require the jury to find either the accident resulted in serious physical harm or that it resulted in death, but “rather the two were combined together. As such, [the COA was] unable to determine which finding the jury made.” Therefore, appellant’s conviction for failure to stop was reduced from a second-degree felony to a fourth-degree felony, and the case remanded to the trial court for resentencing on that count.

### Sixth Appellate District of Ohio

*Nothing to report.*

### Seventh Appellate District of Ohio

*Nothing to report.*

### Eighth Appellate District of Ohio

*Nothing to report.*

### Ninth Appellate District of Ohio

*Nothing to report.*

### Tenth Appellate District of Ohio

**State v. Conde, 2021-Ohio-4222**

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2021/2021-Ohio-4222.pdf>

Trial court erred in revoking appellant’s community control and sending him to prison for failing to pay \$246,971 of the initial amount of \$248,831 without making any findings that either the failure to pay was willful, or, despite bona fide efforts, an alternative means of punishment would not be adequate. *See Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).

## Eleventh Appellate District of Ohio

*Nothing to report.*

## Twelfth Appellate District of Ohio

**State v. Cruz, 2021-Ohio-4241**

Record sealing

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-4241.pdf>

**Trial court erred in denying appellant’s applications to have contempt convictions and dismissed domestic violence charge sealed. Trial court failed “to consider appellant’s eligibility or make the necessary findings required by R.C. 2953.52” for the dismissed charge; it also erred in finding that appellant was not eligible to have his convictions sealed without determining whether appellant’s other convictions in Ohio and Indiana were any offenses other than a misdemeanor or fourth or fifth degree felonies.**

## Supreme Court of Ohio

*Nothing to report.*

## Sixth Circuit Court of Appeals

*Nothing to report.*

## Supreme Court of the United States

*Nothing to report.*