

## Appellate Court Decisions - Week of 12/27/21

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

### First Appellate District of Ohio

#### **State v. Miles, C-210226**

##### Restitution

Full Decision: (No web cite as of yet).

In conviction for misdemeanor theft, trial court erred in ordering appellant to pay \$5,000 in restitution. Appellant had requested a restitution hearing; instead, the trial court “essentially told her that she would need to agree to the restitution if she wanted to be placed on ‘probation’ in lieu of serving jail time. By doing so, the trial court denied [appellant] a meaningful opportunity to challenge the evidence offered by the state and thereby failed to hold an evidentiary hearing at which [appellant] was granted a meaningful opportunity to be heard on the issue of restitution.” The COA rejected the state’s arguments that the appellant had agreed to the amount or that the restitution was part of the plea agreement.

And “although the trial court discussed restitution during sentencing, it never actually sentenced [appellant] to pay \$5000 in restitution when it pronounced its sentence in open court with [appellant] present. While it could be inferred from the hearing, the trial court only affirmatively stated that [appellant] was required to pay \$5000 in restitution later in the sentencing entry. The trial court was required to determine and impose a specific amount of restitution at the hearing.” Remand for court to hold an evidentiary hearing, as required by R.C. 2929.28(A)(1).

#### **State v. Denike, C-200126**

##### Sexual predator classification

Full Decision: (No web cite as of yet).

Trial court erred in classifying appellant as a sexual predator under former R.C. 2950.09(B) because the court had no authority to hold a hearing.

This case came down to statutory interpretation which was somewhat complex, so I am including a lengthy quote to explain what and why the COA held as it did:

“[Appellant] was convicted of rape, a violent sex offense. If [appellant] is to be

classified as a sexual predator, it must be under former R.C. 950.09(B)(1)(a)(ii). That is the only section under which he might fit. But that section provides for a sexual-predator-classification hearing where the indictment *did not* contain a sexually-violent-predator specification. [Appellant's] indictment *did* contain sexually-violent-predator specifications, which the state ultimately dismissed in the plea bargain. Therefore, [appellant] cannot be classified as a sexual predator under that section. This may not have been the result the legislature intended when it amended the statute after *Jones*, especially since the legislature specifically provided for a sexual-predator hearing for offenders who had been acquitted of sexually-violent-predator specifications, but this is the result that the statute requires. The statute, as amended, specifically provides for sexual-predator hearings after acquittals of sexually-violent-predator specifications, but it does not mention dismissals of those specifications. Because sexually-violent-predator specifications were included in [appellant's] indictment and because dismissals of those specifications are not included in the section allowing for sexual-predator hearings after acquittals, [appellant] cannot be classified as a sexual predator under the statute. While this may not be the result the legislature intended when it amended the statute, this court must apply the statute as written.

## Second Appellate District of Ohio

*Nothing to report.*

## Third Appellate District of Ohio

***State v. Morrissey, 2021-Ohio-4471***

Allied offenses

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-4471.pdf>

Trial court erred when it failed to merge appellant's convictions for aggravated robbery and kidnapping where appellant's restraint of the victims was not so "prolonged so as to demonstrate a significant independent event separate from the Aggravated Robbery offenses." *Citing State v. Logan*, 60 Ohio St.2d 126, 397 N.E.2d 1345 (1979).

## Fourth Appellate District of Ohio

*Nothing to report.*

## Fifth Appellate District of Ohio

***State v. Smith, 2021-Ohio-4484***

Consecutive sentences

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2021/2021-Ohio-4484.pdf>

**Trial court erred in imposing consecutive sentences where it failed to make the mandatory statutory findings pursuant to R.C. 2929.14(C)(4).**

### **Sixth Appellate District of Ohio**

***State v. Lloyd, 2021-Ohio-4471***

Prosecutorial misconduct

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2021/2021-Ohio-4471.pdf>

**In conviction for felonious assault, trial court erred when it failed to grant appellant's motion for a mistrial where prosecuting attorney, during cross-examination of appellant, "improperly vouched for the testimonies of the victim and witness" by suggesting there were other statements by other eye witnesses to the altercation.**

### **Seventh Appellate District of Ohio**

*Nothing to report.*

### **Eighth Appellate District of Ohio**

***State v. Thompson, 2021-Ohio-4431***

New trial

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-4431.pdf>

**Trial court erred when it denied appellant's motion for leave to file a motion for a new trial without a hearing. Appellant was "unavoidably prevented from discovering evidence that he did not molest his son" where appellant had been incarcerated and lacked access to his son; therefore, he was entitled to a hearing because he could not have known that his son "was threatened, intimidated, and coerced by an older male cousin to cover up the fact that this cousin molested the son."**

***State v. Hardimon, 2021-Ohio-4430***

## Plea

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-4430.pdf>

Because magistrate's order accepting appellant's plea to misdemeanor assault and criminal damaging "did not conform to Crim.R. 19(D) requirements and the trial court did not hold a hearing on appellant's presentence motion to vacate his plea," COA vacated appellant's conviction. Case is remanded to allow appellant "to file objections to the magistrate's decision accepting his plea and recommending sentence.

### ***State v. Buehner, 2021-Ohio-4435***

## Post-conviction relief

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-4435.pdf>

Following 2002 convictions for murder and attempted murder, trial court erred in denying appellant's motion for a new trial where there was "competent, credible evidence supports a finding that the state failed to disclose to the defense exculpatory evidence contained in [three eyewitnesses'] statements." And in reviewing this evidence not provided to appellant, the COA "conclude[ed] that there [was] a reasonable probability that the outcome of the trial would have been different had the evidence been disclosed to the defense." Case remanded for a new trial.

## Ninth Appellate District of Ohio

*Nothing to report.*

## Tenth Appellate District of Ohio

*Nothing to report.*

## Eleventh Appellate District of Ohio

*Nothing to report.*

## Twelfth Appellate District of Ohio

*Nothing to report.*

**Supreme Court of Ohio**

*Nothing to report.*

**Sixth Circuit Court of Appeals**

*Nothing to report.*

**Supreme Court of the United States**

*Nothing to report.*