

## Appellate Court Decisions - Week of 2/8/21

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

### First Appellate District of Ohio

*Nothing to report.*

### Second Appellate District of Ohio

*Nothing to report.*

### Third Appellate District of Ohio

#### **State v. Harrington, 2021-Ohio-343**

Sentence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2021/2021-Ohio-343.pdf>

**In conviction for attempted felonious assault, a third-degree felony, trial court erred in sentencing appellant to a prison term of 48 months, where conviction carries a possible sentence of 9 months to a maximum sentence of 36 months under R.C.2929.14(A)(3)(b).**

### Fourth Appellate District of Ohio

*Nothing to report.*

### Fifth Appellate District of Ohio

*Nothing to report.*

### Sixth Appellate District of Ohio

*Nothing to report.*

### Seventh Appellate District of Ohio

*Nothing to report.*

### Eighth Appellate District of Ohio

#### **State v. Cottingham, 2021-Ohio-306**

## Sentence

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-306.pdf>

In application to reopen appellant's appeal pursuant to App.R.26(B) for ineffective assistance of appellate counsel, application is granted; appellate counsel was ineffective for not assigning as error that the two counts of aggravated burglary should merge. "[O]nce the trespass has occurred, the crime is complete, and the number of people in the dwelling does not create a separate animus for each person. This court held '[t]he numbers of victims present inside the house was immaterial to the trespass count – there was only one house, so only one trespass.'" Therefore, there was only one burglary, despite there being two people in the house in which appellant trespassed. Case remanded for resentencing.

## 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

***State v. Miller, 2021-Ohio-277***

Suppression; lack of substantial compliance

### Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/12/2021/2021-Ohio-277.pdf>

In conviction for OVI, state failed to show substantial compliance with four Ohio Administrative Code requirements for breathalyzer used; results of such test ordered suppressed.

## Supreme Court of Ohio

*Nothing to report.*

## Sixth Circuit Court of Appeals

**United State v. Lanier, et al., Nos. 16-6655/6657**

**Juror misconduct**

**Full Decision:**

<http://www.opn.ca6.uscourts.gov/opinions.pdf/21a0032p-06.pdf>

**In case over five years old, convictions are reversed and case is remanded. The district court, after being previously ordered to conduct a *Remmer* hearing, still “conduct[ed] a constitutionally inadequate *Remmer* hearing that fail[ed] to guarantee. . . [appellants] a meaningful opportunity to demonstrate jury bias.” Therefore, a new trial was only remedy before a new district judge. *See Remmer v. United States*, 347 U.S. 227, 74 S.Ct. 450, 98 L.Ed. 654 (1954).**

## Supreme Court of the United States

*Nothing to report.*