# Appellate Court Decisions - Week of 6/21/21

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

## First Appellate District of Ohio

***State v. Merz*, C-200152**

**Sentencing; allied offenses**

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

**In conviction for gross sexual imposition and abduction, trial court committed plain error by failing to merge the sentences for the two offenses, as the "restraint was incidental to the sexual assault." Sentences vacated and case remanded for resentencing.**

## Second Appellate District of Ohio

***State v. Stargell*, 2021-Ohio-2057**

**Modification of jury verdict**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2021/2021-Ohio-2057.pdf**

**In state's appeal, trial court erred when it granted appellant's motion to modify the jury verdict from a conviction for felonious assault to assault; however, as this modification constituted a final verdict, the state is not permitted to appeal pursuant to R.C. 2945.67(A). Appeal dismissed as improvidently accepted, as COA lacks jurisdiction to consider it.**

## Third Appellate District of Ohio

***Nothing to report.***

## 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. Williams*, 2021-Ohio-2032**

**No-contact order**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2021/2021-Ohio-2032.pdf**

**Trial court erred when it imposed the community-control sanction of a no-contact order; as appellant was sent to prison, a court cannot impose a prison term and a community-control sanction for the same offense. *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, ¶ 32.**

## Ninth Appellate District of Ohio

***State v. Bardwell-Patino*, 2021-Ohio-2048**

**Magistrate's decision**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2021/2021-Ohio-2048.pdf**

**Trial court abused its discretion when it refused to grant appellant's extension of time to file her objections to the magistrate's decision; appellant demonstrated good cause for the reasonable extension where "the clerk failed 'to timely serve the party seeking the extension with the magistrate's order or decision.' "**

## 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

***Gabbard et al. v. Madison Local School District Board of Education*, et al., 2021-Ohio-2067**

**School employees; carrying deadly weapon**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2021/2021-Ohio-2067.pdf**

**"R.C. 109.78(D) prohibits a school from employing a person who goes armed while on duty in his or her job unless the employee has satisfactorily completed an approved basic peace-officer-training program or has 20 years of experience as a peace officer."**

## Sixth Circuit Court of Appeals

***Nothing to report.***

## Supreme Court of the United States

***Lange v. California*, 594 U.S. ____ (2021)**

**Fourth Amendment; warrantless home entry**

**Full Decision:**
**https://www.supremecourt.gov/opinions/20pdf/20-18_cb7d.pdf**

***Held: Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always—that is, categorically—justify a warrantless entry into a home. Pp. 3–16.***

***(a) The Court's Fourth Amendment precedents counsel in favor of a case-by-case assessment of exigency when deciding whether a suspected misdemeanant's flight justifies a warrantless home entry. The Fourth Amendment ordinarily requires that a law enforcement officer obtain a judicial warrant before entering a home without permission. Riley v. California, 573 U. S. 373, 382. But an officer may make a warrantless entry when "the exigencies of the situation," considered in a case-specific way, create "a compelling need for official action and no time to secure a warrant."***

*Kentucky v. King, 563 U. S. 452, 460; Missouri v. McNeely, 569 U. S. 141, 149. The Court has found that such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape.*

*The amicus contends that a suspect's flight always supplies the exigency needed to justify a warrantless home entry and that the Court endorsed such a categorical approach in United States v. Santana, 427 U. S. 38. The Court disagrees. In upholding a warrantless entry made during a "hot pursuit" of a felony suspect, the Court stated that Santana's "act of retreating into her house" could "not defeat an arrest" that had "been set in motion in a public place." Id., at 42–43. Even assuming that Santana treated fleeing-felon cases categorically, that statement still does not establish a flat rule permitting warrant- less home entry whenever a police officer pursues a fleeing misde- meanant. Santana did not resolve the issue of misdemeanor pursuit; as the Court noted in a later case, "the law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established" one way or the other. Stanton v. Sims, 571 U. S. 3, 8, 10.*

*Misdemeanors run the gamut of seriousness, and they may be minor. States tend to apply the misdemeanor label to less violent and less dangerous crimes. The Court has held that when a minor offense (and no flight) is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry. See Welsh v. Wisconsin, 466 U. S. 740, 742–743. Add a suspect's flight and the calculus changes—but not enough to justify a categorical rule. In many cases, flight creates a need for police to act swiftly. But no evidence suggests that every case of misdemeanor flight creates such a need.*

*The Court's Fourth Amendment precedents thus point toward assessing case by case the exigencies arising from misdemeanants' flight. When the totality of circumstances shows an emergency—a need to act before it is possible to get a warrant—the police may act without waiting. Those circumstances include the flight itself. But pursuit of a misdemeanant does not trigger a categorical rule allowing a warrant-less home entry. Pp. 3–12.*

*(b) The common law in place at the Constitution's founding similarly does not support a categorical rule allowing warrantless home entry whenever a misdemeanant flees. Like the Court's modern precedents, the common law afforded the home strong protection from government intrusion and it generally required a warrant before a government official could enter the home. There was an oft-discussed exception: An officer, according to the common-law treatises, could enter a house to pursue a felon. But in the misdemeanor context, officers had more limited authority to intrude on a fleeing suspect's home. The commentators generally agreed that the authority turned on the circumstances; none suggested a rule authorizing warrantless entry in every misdemeanor-pursuit case. In short, the common law did not have— and does not support—a categorical rule allowing warrantless home entry when a suspected misdemeanant flees. Pp. 12–16.*

**Vacated and remanded.**

**KAGAN, J., delivered the opinion of the Court, in which BREYER, SOTOMAYOR, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined, and in which THOMAS, J., joined as to all but Part II–A. KAVANAUGH, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, in which KAVANAUGH, J., joined as to Part II. ROBERTS, C. J., filed an opinion concurring in the judgment, in which ALITO, J., joined.**

***Mahanoy Area School District v. B.L.*, 594 U.S. ____ (2021)**

**Fourth Amendment; warrantless home entry**

**Full Decision:**
**https://www.supremecourt.gov/opinions/20pdf/20-255_g3bi.pdf**

***Held: While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome B. L.'s interest in free expression in this case. Pp. 4–11.***

***(a) In Tinker, we indicated that schools have a special interest in regulating on-campus student speech that "materially disrupts class work or involves substantial disorder or invasion of the rights of others." 393 U. S., at 513. The special characteristics that give schools additional license to regulate student speech do not always disappear when that speech takes place off campus. Circumstances that may implicate a school's regulatory interests include serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices. Pp. 4–6.***

***(b) But three features of off-campus speech often, even if not always distinguish schools' efforts to regulate off-campus speech. First, a school will rarely stand in loco parentis when a student speaks off campus. Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full 24-hour day. That means courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all. Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus, because America's public schools are the nurseries of democracy. Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. Pp. 6–8.***

***(c) The school violated B. L.'s First Amendment rights when it suspended her from the junior varsity cheerleading squad. Pp. 8–11.***

***(1) B. L.'s posts are entitled to First Amendment protection. The statements made in B. L.'s Snapchats reflect criticism of the rules of a community of which B. L. forms a part. And B. L.'s message did not involve features that would place it outside the First Amendment's ordinary protection. Pp. 8–9.***

***(2) The circumstances of B. L.'s speech diminish the school's interest in regulation. B. L.'s posts appeared outside of school hours from a location outside the school. She did not identify the school in her posts or target any member of the school community with vulgar or abusive language. B. L. also transmitted her speech through a personal cellphone, to an audience consisting of her private circle of Snap-chat friends. P. 9.***

***(3) The school's interest in teaching good manners and consequently in punishing the use of vulgar language aimed at part of the school community is weakened considerably by the fact that B. L. spoke outside the school on her own time. B. L. spoke under circumstances where the school did not stand in loco parentis. And the vulgarity in B. L.'s posts encompassed a message of criticism. In addition, the school has presented no evidence of any general effort to prevent students from using vulgarity outside the classroom. Pp. 9–10.***

***(4) The school's interest in preventing disruption is not supported by the record, which shows that discussion of the matter took, at most,5 to 10 minutes of an Algebra class "for just a couple of days" and that some members of the cheerleading team were "upset" about the content of B. L.'s Snapchats. App. 82–83. This alone does not satisfy Tinker's demanding standards. Pp. 10–11.***

***(5) Likewise, there is little to suggest a substantial interference in, or disruption of, the school's efforts to maintain cohesion on the school cheerleading squad. P. 11.***

**964 F.3d 170, affirmed.**

**BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, KAGAN, GORSUCH, KAVANAUGH and BARRETT, JJ., joined. ALITO, J., filed a concurring opinion, in which GORSUCH, J., joined. THOMAS, J., filed a dissenting opinion.**