Appellate Court Decisions - Week of 1/14/19

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

First Appellate District of Ohio

***State v. Cephas*, 2019-Ohio-52**

Invited Error: Evidence: Ineffective Assistance: Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-52.pdf

Summary from the First District:

"The admission of statements by a victim who did not testify at trial was invited error where the state did not elicit the statements on direct examination of the police officer witness, defense counsel asked the witness about the statements on cross-examination, and the state questioned the witness about the statements on redirect examination.

"The trial court did not err in admitting a photograph of a child victim that showed the child's full body with medical tubing where the photograph was relevant to prove serious physical harm and physical harm by means of a deadly weapon, the photograph was not needlessly cumulative, and the probative value of the photograph was not substantially outweighed by the danger of unfair prejudice to defendant.

"Defendant was not denied the effective assistance of counsel where defense counsel admitted in opening argument that defendant had struggled with substance abuse: counsel's admissions were tactical decisions and defendant failed to overcome the presumption that those admissions were sound trial strategy.

"The appellate court cannot consider on appeal defendant's claims of ineffective assistance of counsel based on matters outside the record.

"The trial court did not err in sentencing defendant where defendant failed to affirmatively show that the court did not consider the R.C. 2929.11 and 2929.12 sentencing factors, and where the record shows that the trial court engaged in the requisite analysis and made the findings necessary to support the imposition of consecutive sentences and that those findings were supported by the record."

***State v. Thomas*, 2019-Ohio-132**

Waiver of Counsel: Competency: Other-Acts Evidence: Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-132.pdf

Summary from the First District:

"The trial court did not err by failing to sua sponte order a competency evaluation before allowing defendant to waive trial counsel, because defendant did not manifest any observable signs of incompetency during his proceedings such that a reasonable judge would experience genuine doubt his competency.

"Defendant's endorsement of fringe views did not mean that he could not cooperate with his attorney or understand the judicial proceedings against him.

"The trial court's admission of other-acts evidence during the testimony of a state's witness did not rise to the level of plain error where defendant elicited similar testimony on cross-examination, and the state presented overwhelming evidence of defendant's guilt.

"The trial court did not deprive defendant of a fair trial or his right to compulsory process when it failed to construe defendant's pro se motions requesting discovery as requests for assistance in subpoenaing the state's nontestifying informant, where the record demonstrated that defendant knew the identity of the informant and how to subpoena witness, and that he had been provided the assistance of a legal advisor.

"The trial court erred by sentencing defendant to separate, concurrent terms for allied offenses of similar import where the trial court had determined at sentencing that the offenses of possessing marijuana and trafficking in marijuana were allied offenses of similar import, and the state had elected to pursue the trafficking offense."

***State v. Jones*, 2019-Ohio-133**

Sex Offender Registry

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-133.pdf

Summary from the First District:

"The trial court did not err in dismissing the indictment charging defendant with failing to verify his current address and failing to provide notice of an address change, or in directing the sheriff to remove defendant's name from the sex-offender registry, because defendant was not subject to Megan's Law's sex-offender registration and reporting requirements where there was nothing in the record to demonstrate that defendant had committed felonious assault with a sexual motivation."

***State v. Young*, 2019-Ohio-134**

Postconviction: Jurisdiction

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-134.pdf

Summary from the First District:

"Defendant's postconviction challenge to the legal sufficiency of the evidence to support the firearm specification accompanying an aggravated-robbery charge was subject to dismissal for lack of jurisdiction: the claim was reviewable under R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief, because the claim sought relief based on an alleged due-process violation during the proceedings leading to the aggravated-robbery conviction, R.C. 2953.21(A)(1); but the postconviction statutes did not confer jurisdiction to entertain the claim, because the claim did not satisfy R.C. 2953.21(A)(2)'s time restrictions or R.C. 2953.23's jurisdictional requirements for entertaining a late postconviction claim; and the claim, even if demonstrated, would not have rendered the conviction void."

***State v. Sager*, 2019-Ohio-135**

Expungement: R.C. 2953.32

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/1/2019/2019-Ohio-135.pdf

Summary from the First District:

"R.C. 2953.32 identifies the requirements for an applicant seeking to have records of her convictions sealed, but R.C. 2953.36 precludes the sealing of records of certain offenses, including when the victim of the offense was less than sixteen years of age and when the offense was a misdemeanor of the first degree or a felony.

"While the text of R.C. 2919.23 does not define who is the victim of the proscribed conduct, other provisions of the Revised Code, when read in pari materia, make it clear that a child enticed, taken, kept, or harbored is a victim of an interfering-with-custody offense."

Second Appellate District of Ohio

Nothing to report.

Third Appellate District of Ohio

Nothing to report.

Fourth Appellate District of Ohio

Nothing to report.

Fifth Appellate District of Ohio

***State v. Trout*, 2019-Ohio-124**

OVI: Motion to Suppress

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-124.pdf

The trial court erred in denying Appellant's motion to suppress where Appellant was not required to signal when making a right turn, and the trooper's incorrect interpretation of R.C. 4511.39(A) was not reasonable.

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

Nothing to report.

Eleventh Appellate District of Ohio

***State v. Fontana*, 2019-Ohio-72**

Sentencing: Community Control: Court's Authority

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2019/2019-Ohio-72.pdf

Although a trial court is authorized to impose conditions on Appellant's use of her nursing license during her period of community control, the trial court exceeded the scope of its authority when it ordered her to forfeit her license.

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

***Stokeling v. United States*, No. 17-5554**

Armed Career Criminal Act

Full Decision:
https://www.supremecourt.gov/opinions/18pdf/17-5554_4gdj.pdf

Syllabus:

"Petitioner Stokeling pleaded guilty to possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U. S. C. §922(g)(1). Based on Stokeling's prior criminal history, the probation office recommended the mandatory minimum 15-year prison term that the Armed Career Criminal Act (ACCA) provides for §922(g) violators who have three previous convictions 'for a violent felony,' §924(e). As relevant here, Stokeling objected that his prior Florida robbery conviction was not a 'violent felony,' which ACCA defines, in relevant part, as 'any crime punishable by imprisonment for a term exceeding one year" that "has as an element the use, attempted use, or threatened use of physical force against the person of another,' §924(e)(2)(B)(i). The District Court held that Stokeling's actions during the robbery did not justify an ACCA sentence enhancement, but the Eleventh Circuit reversed.

"*Held*:

"1. ACCA's elements clause encompasses a robbery offense that requires the defendant to overcome the victim's resistance. Pp. 3–12.

"(a) As originally enacted, ACCA prescribed a sentence enhancement for certain individuals with three prior convictions 'for robbery or burglary,' 18 U. S. C. App. §1202(a) (1982 ed., Supp. II), and defined robbery as an unlawful taking 'by force or violence,' §1202(c)(8)—a clear reference to common-law robbery, which required a level of 'force' or 'violence' sufficient to overcome the resistance of the victim, however slight. When Congress amended ACCA two years later, it replaced the enumerated crimes with the elements clause, an expanded enumerated offenses clause, and the now-defunct residual clause. The new elements clause extended ACCA to cover any offense that has as an element 'the use, attempted use, or threatened use of physical force,' §924(e)(2)(B)(i) (emphasis added). By replacing robbery with a clause that has 'force' as its touchstone, Congress retained the same common-law definition that undergirded the definition of robbery in the original ACCA. This understanding is buttressed by the then widely accepted definitions of robbery among the States, a significant majority of which defined nonaggravated robbery as requiring a degree of force sufficient only to overcome a victim's resistance. Under Stokeling's reading, many of those state robbery statutes would not qualify as ACCA predicates. But federal criminal statutes should not be construed in ways that would render them inapplicable in many States. Pp. 3–8.

"(b) This understanding of 'physical force' comports with *Johnson v. United States*, 559 U. S. 133. The force necessary for misdemeanor battery addressed in Johnson does not require resistance or even physical aversion on the part of the victim. Rather, the 'slightest offensive touching' would qualify. *Id.*, at 139. It is thus different in kind from the force necessary to overcome resistance by a victim, which is inherently 'violent' in the sense

contemplated by Johnson and 'suggest[s] a degree of power that would not be satisfied by the merest touching.' *Ibid.* *Johnson* did not purport, as Stokeling suggests, to establish a force threshold so high as to exclude even robbery from ACCA's scope. Pp. 8–10.

"(c) Stokeling's suggested definition of 'physical force'—force 'reasonably expected to cause pain or injury'—is inconsistent with the degree of force necessary to commit robbery at common law. Moreover, the Court declined to adopt this standard in *Johnson*. Stokeling's proposal would prove exceedingly difficult to apply, would impose yet another indeterminable line-drawing exercise on the lower courts, and is not supported by *United States v. Castleman*, 572 U. S. 157. Pp. 10–12.

"2. Robbery under Florida law qualifies as an ACCA-predicate offense under the elements clause. The term 'physical force' in ACCA encompasses the degree of force necessary to commit common-law robbery. And the Florida Supreme Court has made clear that the robbery statute requires 'resistance by the victim that is overcome by the physical force of the offender.' *Robinson v. State*, 692 So. 2d 883, 886. Pp. 12–13.

"684 Fed. Appx. 870, affirmed."

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