Appellate Court Decisions - Week of 2/12/18

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

First Appellate District of Ohio

***State v. Braden*, 2018-Ohio-563**

Evidence: Burglary: Double Jeopardy: Receiving Stolen Property

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-563.pdf

Summary from the First District:

"The trial court erred in convicting defendant of second-degree burglary under R.C. 2911.12(A)(2) where the state did not prove an element of the offense—that "any person other than an accomplice of the offender is present or likely to be present"—beyond a reasonable doubt; and where defendant stipulated to committing third-degree burglary under R.C. 2911.12(A)(3), a conviction for third-degree burglary is not barred by double jeopardy even though defendant's previous conviction for receiving stolen property under R.C. 2913.51 involved the same property."

***State v. Finnell*, 2018-Ohio-564**

Counsel: Evid.R. 606(B)

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-564.pdf

Summary from the First District:

"Trial counsel was deficient in failing to notify the trial court of a stipulation of potential intimidation of the jurors by defendant and argue that the stipulation was sufficient under Evid.R. 606(B) to entitle defendant to the release of juror information under seal to secure juror testimony for a motion for a new trial where a different judge, who was unaware of the previous stipulation, presided over the hearing on the new-trial motion."

***State v. Jones*, 2018-Ohio-565**

Evidence: Dangerous Dog

Full Decision:

http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-565.pdf

Summary from the First District:

"The trial court erred in convicting defendant of failing to confine a dangerous dog under R.C. 955.22(D) where defendant's dog had not been previously designated dangerous under R.C. 955.11."

***State v. Howell*, 2018-Ohio-591**

Search: OVI

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-591.pdf

Summary from the First District:

"The trial court erred in denying defendant's motion to suppress the unlawful stop of her car and all evidence gathered as a result of the unlawful stop where the arresting state trooper had erroneously determined that defendant had committed a violation of R.C. 4513.15(A)(1): the trooper's mistake of law was not reasonable where the statute unambiguously regulated the distribution of light to be used when a driver approaches an oncoming vehicle, and the trooper had testified that defendant had failed to dim her headlights while traveling on the interstate behind and in the same direction as the trooper.

"The totality of the circumstances surrounding the stop of defendant's vehicle did not provide a reasonable, articulable suspicion that defendant had committed, or was engaged in committing, a crime. [*But see* DISSENT: At the time of the traffic stop, the trooper possessed a reasonable, articulable suspicion that defendant was driving while impaired where he had witnessed her vehicle 'bouncing' within the marked lane, she had failed to dim her headlights when she approached him from behind, she had failed to pass him on the interstate when he slowed to 55 m.p.h., and he testified that he "continued to follow her just to see if there were any other signs.']"

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

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. Jones*, 2018-Ohio-298**

Sentencing

Full Decision:
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-498.pdf

En Banc Question:

"Whether, under *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, the Ohio Supreme Court read R.C. 2929.11 and 2929.12 into R.C. 2953.08(G)(2)(a), allowing an appellate court to increase, reduce, or otherwise modify a sentence or vacate the sentence and remand the matter to the sentencing court for re-sentencing if the record does not support the sentencing court's findings under R.C. 2929.13(B) or (D), R.C. 2929.14(B)(2)(e) or (C), R.C. 2929.20(I), as well as R.C. 2929.11 and 2929.12."

The Eighth District answered the question in the affirmative.

***State v. M.H.*, 2018-Ohio-582**

Expungement

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-582.pdf

Summary from the Eighth District:

The trial court's judgment denying defendant's application to seal his record of convictions was reversed because the trial court based its decision only upon the fact that the defendant was convicted of theft in office. Theft in office, however, is not exempt from being expunged under R.C. 2953.36. The trial court failed to consider the fact that the defendant established that he had been rehabilitated since he committed the acts in his criminal case, and thus, abused its discretion when it denied defendant's application.

***In re O.P.*, 2018-Ohio-580**

Juvenile: Sex Offender

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-580.pdf

Summary from the Eighth District:

"The trial court's judgment denying defendant's application to seal his record of convictions was reversed because the trial court based its decision only upon the fact that the defendant was convicted of theft in office. Theft in office, however, is not exempt from being expunged under R.C. 2953.36. The trial court failed to consider the fact that the defendant established that he had been rehabilitated since he committed the acts in his criminal case, and thus, abused its discretion when it denied defendant's application."

Ninth Appellate District of Ohio

Nothing to report.

Tenth Appellate District of Ohio

***State v. D.H.*, 2018-Ohio-559**

Rape: Sufficiency

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-559.pdf

Summary from the Tenth District:

"Jury instructions did not rise to the level of plain error. The evidence was insufficient to

sustain appellant's conviction for rape by vaginal intercourse, as the state failed to prove that the conduct occurred prior to the August 3, 2006 amendment to R.C. 2907.01(A), and the evidence failed to demonstrate that appellant inserted his penis into the victim's vaginal opening. Appellant's rape conviction was modified to a conviction for gross sexual imposition in violation of R.C. 2907.05(A)(4). Appellant failed to demonstrate that he was deprived of the effective assistance of counsel. The trial court did not abuse its discretion in denying appellant's motion for a mistrial."

Eleventh Appellate District of Ohio

Nothing to report.

Twelfth Appellate District of Ohio

***State v. Caudill*, 2018-Ohio-550**

Sentencing

Full Decision:
http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-550.pdf

Summary from the Twelfth District:

"Appellant's convictions were supported by sufficient evidence and were not against the manifest weight because his fingerprints were found on the materials used in the manufacturing process, as well as on the finished methamphetamine. However, the trial court could not sentence appellant on a second-degree felony where the jury verdict form did not state the degree designation, the jury made no finding as to what drug appellant manufactured, and where the statute provided for a third-degree felony option."

Supreme Court of Ohio

***Turner v. Hooks*, 2018-Ohio-556**

Juvenile Procedure: R.C. 2151.12(G)

Full Decision:
https://supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-ohio-556.pdf

"Written notice of the time, place, and purpose of a hearing in juvenile court must be given to a parent, guardian, or other custodian."

"Notice requirement satisfied by service upon a biological parent whose parental rights had not been fully terminated."

Sixth Circuit Court of Appeals

***Higdon v. United States*, No. 17-5027**

Armed Career Criminal Act

Full Decision:
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0030p-06.pdf

"Daryl Higdon was sentenced as an armed career criminal based in part on a North Carolina conviction for discharging a firearm into an occupied structure. The question here is whether that offense—which requires an application of force to an occupied structure, but not to the occupants themselves—nonetheless counts as an offense that involves the use "of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i). We hold it does not and reverse the district court's decision to the contrary."

Supreme Court of the United States

Nothing to report.