# Appellate Court Decisions - Week of 8/6/18

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

## First Appellate District of Ohio

***State v. Lanter*, 2018-Ohio-3127**

**Burglary: Jury Instructions: Lesser-Included Offense**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3127.pdf**

**Summary from the First District: "The trial court is only required to give a jury instruction on a lesser-included offense where: (1) one offense carries a greater penalty than the other, (2) some element of the greater offense is not required by statute to prove the lesser offense, and (3) the greater offense as defined by statute cannot be committed without the lesser offense being committed; and the jury could reasonably convict defendant of the lesser-included offense. Receiving stolen property is not a lesser-included offense of burglary."**

***State v. Evans*, 2018-Ohio-3129**

**Juvenile Bindover: Speedy Trial**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3129.pdf**

**Summary from the First District: "Where the juvenile was bound over by the juvenile court to the court of common pleas, the speedy-trial time began to run on the day after the juvenile court relinquished jurisdiction.**

**"Even though a judgment entry stated that defendant was '[n]ot waiving time,' where the continuance was granted at defendant's request the delay caused by the request was not chargeable to the state.**

**"Where defendant waived a substantial amount of time, and a substantial amount of time was tolled due to his actions, defendant was tried within the speedy-trial period.**

**"Though defendant was not tried for over a year after his arrest on felony charges, his constitutional right to a speedy trial was not violated because much of the delay was caused by his requests for continuances, he did not**

**assert his speedy-trial right until late in the proceedings, and the pretrial incarceration was not oppressive because the length of the delay was attributable to defendant.**

**"The juvenile court did not abuse its discretion in transferring jurisdiction to the common pleas court where the juvenile court considered the statutory factors, and its decision was based on the circumstances of the offense, the harm to the victim, and that defendant was awaiting disposition on another felony charge at the time of the offense and was minimizing his role in the offense.**

**"Where the record showed that the juvenile court considered a psychological report stating that defendant was amenable to rehabilitation in the juvenile system the juvenile court did not abuse its discretion in transferring jurisdiction to the common pleas court, because the juvenile court was entitled to disagree with the opinion of a medical expert and take into account the severity of the offenses."**

***State v. Hill*, 2018-Ohio-3130**

**Burglary: Suppression: *Miranda*: Other-Acts Evidence: Cumulative Error**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2018/2018-Ohio-3130.pdf**

**Summary from the First District: "In a prosecution for burglary in violation of R.C. 2911.12(A)(2), where the state presented evidence that a home was regularly inhabited, the residents were in and out of the home on the day of the burglary, and the residents were temporarily absent at the time of the offense, the state presented sufficient evidence to prove the likely-to-be-present element.**

**"A suspect who voluntarily gives information without being asked questions is not subject to custodial interrogation and is not entitled to *Miranda* warnings.**

**"Where defendant voluntarily submitted into evidence videos that contained other-acts evidence, he waived the right to appeal their admissibility.**

**"Defense counsel's failure to object to the other-acts evidence did not constitute deficient performance where the case was tried to the bench and defendant failed to establish that the court considered the evidence or that there is a reasonable probability that the result of the trial would have been different absent the evidence.**

**"The doctrine of cumulative error is inapplicable where there are not multiple instances of harmless error."**

## Second Appellate District of Ohio

***State v. White*, 2018-Ohio-3076**

**Pandering Obscenity: Sufficiency**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3076.pdf**

**Summary from the Second District: "Defendant's convictions for unlawful sexual conduct with a minor (10 or more years older than the victim), two counts of trafficking in persons, and two counts of compelling prostitution in furtherance of human trafficking were based on sufficient evidence and were not against the manifest weight of the evidence. The State concedes, and we agree, that defendant's conviction for pandering obscenity involving a minor was based on insufficient evidence because the photographs were not obscene. The trial court did not err in denying defendant's motion to suppress statements made at the police station following Miranda warnings. Defendant waived his Miranda rights, and his statements were made voluntarily. Defendant forfeited his void-for-vagueness constitutional challenge to R.C. 2905.32(A)(2)(a), the trafficking in persons statute. Even if we were to consider his argument regarding the "less than sixteen years of age" language, we would not find it to be vague. The record fails to demonstrate ineffective assistance of counsel or that the prosecutors engaged in misconduct by offering the testimony of defendant's co-defendant. Judgment reversed as to the charge of pandering obscenity involving a minor. In all other respects, judgment affirmed."**

***State v. Ramey*, 2018-Ohio-3072**

**Sentencing: Allied Offenses: Murder: Aggravated Burglary**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3072.pdf**

**Summary from the Second District: "The trial court, following a jury trial, merged certain counts resulting in the Defendant-appellant being convicted and sentenced for murder (proximate cause of felonious assault) and aggravated burglary (physical harm). Since Defendant-appellant's commission of felonious assault – with the felonious assault being necessary to the murder conviction – is the aggravating element that made**

**the burglary an aggravated, as opposed to simple, burglary, the offenses of murder (proximate cause of felonious assault) and aggravated burglary are allied offenses of similar import subject to merger. The trial court, accordingly, erred by not merging the two offenses. The record does not support a conclusion that during deliberations the jury had incorrect jury instructions. The trial court's decision to give a "castle doctrine" instruction that the victim did not have a duty to retreat from his home was an accurate statement of law, and, given the circumstances of the case, the instruction was not an abuse of discretion. Defendant-appellant, given the facts of the case, was not entitled to a voluntary manslaughter instruction. Defendant-appellant, therefore, was not prejudiced by any error regarding the trial court's voluntary manslaughter instruction. Finally, the jury's rejection of Defendant-appellant's self-defense claim was not against the manifest weight of the evidence, and the State produced sufficient evidence that Defendant-appellant trespassed into the victim's home. Judgment reversed in part, affirmed in part, and remanded for re-sentencing. (Hall, J., concurring in part and dissenting in part.)"**

## Third Appellate District of Ohio

***Nothing to report.***

## Fourth Appellate District of Ohio

***State v. Straley*, 2018-Ohio-3080**

**Plea: Motion to Withdraw: Post-Sentence**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/4/2018/2018-Ohio-3080.pdf**

**The trial court abused its discretion in denying appellant's motion to withdraw his guilty plea because it advised him that his entire 35-year, 10-month agreed sentence was not mandatory, when 21 years of the sentence were actually mandatory. The Fourth District was clearly not happy about reaching this decision, and seemed to be strongly urging the Ohio Supreme Court to reverse course on sentences being void ab initio rather than voidable.**

## Fifth Appellate District of Ohio

***State v. Daniels*, 2018-Ohio-3113**

**OVI: Motion to Suppress**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3113.pdf**

**The trial court erred in denying Appellant's motion to suppress because the Trooper lacked reasonable suspicion to ask Appellant to perform the field sobriety tests. The Trooper's decision was based on Appellant's improper right hand turn, his bloodshot eyes, and that fact that the stop occurred early in the morning.**

***State v. Weber*, 2018-Ohio-3174**

**Sentencing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3174.pdf**

**From the Opinion: "[T]he trial court did not have statutory authority to order, as part of the original sentence, appellant's placement into a [community-based control facility] as part of her community control sanction after her completion of the separate prison term."**

## Sixth Appellate District of Ohio

***Nothing to report.***

## Seventh Appellate District of Ohio

***In re K.E. Alleged Delinquent Child*, 2018-Ohio-3100**

**Juvenile: Sentencing**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-3100.pdf**

**From the Opinion: "Juvenile-Appellant K.E. appeals the disposition entered by the Mahoning County Common Pleas Court, Juvenile Division. Appellant urges the case should be remanded for a new dispositional hearing due to the juvenile court's expression of a mistaken belief that the Department of Youth Services (DYS) could reduce the minimum sentence imposed by the court. He alternatively contends it was an abuse of discretion to impose maximum, consecutive sentences on two counts. As this court concludes the case must be remanded for a new dispositional hearing, Appellant's alternative contention as to the length of the sentence is not ripe for review**

**at this time. For the following reasons, the dispositional order is reversed, and the case is remanded for a new dispositional hearing."**

## Eighth Appellate District of Ohio

***Nothing to report.***

## Ninth Appellate District of Ohio

***Nothing to report.***

## Tenth Appellate District of Ohio

***State v. Oteng*, 2018-Ohio-3138**

**Post-Conviction**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-3138.pdf**

**Summary from the Tenth District: "Where a defendant has been convicted of murder based on the testimony of a single eyewitness that is in conflict with physical and forensic evidence and the testimony of other witnesses, the trial court abused its discretion in denying the defendant leave to amend his postconviction petition with the affidavit of another direct eyewitness to the shooting who averred that the defendant was not the murderer. Arguments about ineffective assistance of counsel based on facts outside the original trial court record about counsel's simultaneous personal criminal proceedings prosecuted by the same party as the one prosecuting the defendant could not have been raised on direct appeal and were thus not foreclosed by res judicata in considering the defendant's postconviction petition."**

***State v. Oloye*, 2018-Ohio-3182**

**Search: Motion to Suppress**

**Full Decision;**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-3182.pdf**

**The trial court did not err in granting Appellee's motion to suppress the search of his person after a warrantless arrest. Appellee was the passenger in a vehicle purportedly pulled over because it had no front license plate, and because the driver allegedly engaged in using cloned credit cards at**

**Home Depot. The state failed to meet its probable cause standard that Appellee was engaged in the "common enterprise of credit-card fraud."**

## Eleventh Appellate District of Ohio

***Nothing to report.***

## Twelfth Appellate District of Ohio

***State v. Porter*, 2018-Ohio-3123**

**Sentencing: Jail-Time Credit**

**Full Decision:**
**http://www.supremecourt.ohio.gov/rod/docs/pdf/12/2018/2018-Ohio-3123.pdf**

**Summary from the Twelfth District: "Appellant was improperly given jail-time credit for the time he was on house arrest, overruling this court's previous decision in *State v. Fillinger*, 12th Dist. Madison No. CA2016-04-015, 2016-Ohio-8455. The trial court, however, properly calculated jail-time credit in regard to not giving appellant credit for the time he was subject to a curfew."**

## Supreme Court of Ohio

***State ex rel. O'Malley v. Collier-Williams*, 2018-Ohio-3154**

**Writ of Prohibition: Capital Murder: Jury Waiver**

**Full Decision:**
**https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-3154.pdf**

**From the Opinion: "In this original action, relator, Cuyahoga County Prosecuting Attorney Michael C. O'Malley, seeks writs of prohibition and mandamus to prevent respondent, Cuyahoga County Common Pleas Court Judge Cassandra Collier-Williams, from empaneling a jury for intervening-respondent Kelly Foust's capital murder resentencing hearing. We hold that Judge Collier-Williams patently and unambiguously lacks jurisdiction to empanel a jury for a resentencing hearing in a capital-murder case when the defendant has validly waived a jury trial. We therefore grant O'Malley a writ of prohibition and order Judge Collier-Williams to vacate her March 9, 2017 journal entry granting Foust's renewed motion for a capital resentencing hearing before a jury. We deny as moot O'Malley's request for a writ of mandamus."**

## Sixth Circuit Court of Appeals

***United States v. Tucker*, No. 17-3503**

**Motion to Suppress**

**Full Decision:**
**http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0396n-06.pdf**

**The Sixth Circuit affirmed the district court's grant of Appellee's motion to suppress the search of his home, which was conducted pursuant to a warrant. This portion of the decision explaining why not even the good-faith exception saves the bare-bones warrant is worth reading:**

**"The Saxon Avenue affidavit is a prototypical example of a bare-bones affidavit. Stripped down to its basics, the affidavit asserts that evidence of drug trafficking would be found at the Saxon Avenue residence because (1) a suspected drug dealer once parked in the driveway for a brief period of time, (2) the house's owner had a 17-year-old conviction for possession with intent to distribute, and (3) a four-month-old, seemingly unverified, apparently anonymous tip suggested that drug dealing may have occurred there. Given that all reasonably well-trained officers must be presumed to know that "'a suspect's mere presence . . . at a residence is too insignificant a connection with that residence to establish that relationship' necessary to a finding of probable cause," *Savoca*, 761 F.2d at 297 (quoting *United States v. Flores*, 679 F.2d 173, 175 (9th Cir. 1982)); cf. *United States v. Helton*, 314 F.3d 812, 825 (6th Cir. 2003) ("A reasonable officer knows that evidence of three calls a month to known drug dealers from a house . . . falls well short of establishing probable cause that the house contains evidence of a crime."), and because the remaining evidence is not probative of drug trafficking at the residence, it was objectively unreasonable for the executing officers in this case to believe that their conduct comported with the Fourth Amendment.**

**"The government attempts to resist this conclusion by pointing to additional, allegedly "critical" facts contained in the Saxon Avenue affidavit. Specifically, the government notes that when Rocha-Ayon visited the residence, he was driving a car that he sometimes—but not always—used in connection with drug trafficking; that prior to his arrival on February 17, Rocha-Ayon stopped to purchase household items that are sometimes—but not always—used by drug traffickers; and that two days later, Rocha-Ayon was arrested 135 miles away while transporting cocaine. Based on these additional facts, the government claims that a reasonable law enforcement officer could "easily infer" that "ROCHA-AYON JR. [had] traveled to 791 Saxon Avenue on February 17, 2017 to collect drug proceeds**

**from TUCKER to pay for the upcoming delivery of cocaine," that "a portion of the currency recovered in ROCHA-AYON's possession was obtained from TUCKER" that day, and that Rocha-Ayon had "purchased the vacuum sealer and bags to conceal the currency he was to obtain from TUCKER[.]" Affidavit for Search Warrant for 791 Saxon Avenue ¶ 24.**

**"Contrary to the government's assertion, no reasonably well-trained officer could draw such conclusions based upon the particularized facts in the affidavit; rather, the officers speculated based upon hunches (albeit, good hunches, as their suspicions proved correct). To see why, it helps to note what is absent from the Saxon Avenue affidavit. It does not contain any indication of drug dealing at the residence. Nor does the affidavit provide any specific basis for concluding that Rocha-Ayon was transporting drugs to that location when he was arrested on February 19. Furthermore, it tells us nothing about the relationship between Rocha-Ayon and Tucker. And, most importantly, it does not mention what Rocha-Ayon did once he arrived at the residence on February 17. For all that appears (and he was under surveillance), Rocha-Ayon sat quietly in his car, interacted with no one, and neither retrieved nor left anything at the address. Rocha-Ayon's purchase of drug-trafficking paraphernalia—i.e., the vacuum sealer and bags—therefore cannot constitute evidence of criminality at the Saxon Avenue residence because there is no indication that they ever left his car, let alone that they made their way into the residence. Once the government's additional evidence is discounted, however, the Saxon Avenue affidavit "provides nothing more than a mere 'guess that contraband or evidence of a crime would be found[.]'" *White*, 874 F.3d at 496 (quoting *United States v. Schultz*, 14 F.3d 1093, 1098 (6th Cir. 1994)). Because Tucker's 17-year-old conviction is not probative of whether he was using his current residence to traffic drugs, see *United States v. Christian*, 893 F.3d 846, 863 (6th Cir. 2018) ("Absent additional recent reliable evidence, . . . old criminal convictions cannot support a finding that drug activity is continuous at the time of the search."); see also *United States v. Brown*, 828 F.3d 375, 385 (6th Cir. 2016) (stating that a 12-year-old conviction for conspiracy to distribute marijuana is not probative of whether a defendant is using his residence for drug trafficking), the government's appeal rests entirely on Rocha-Ayon's brief appearance in the driveway of 791 Saxon Avenue. As noted earlier, no reasonably well-trained officer would think this sufficient to establish probable cause."**

## Supreme Court of the United States

***Nothing to report.***