

## Appellate Court Decisions - Week of 5/20/19

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

### First Appellate District of Ohio

#### **State v. Campbell, C-170666**

New trial

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

**Trial court erred in denying Mr. Campbell leave to file a new-trial motion and abused its discretion in overruling his new-trial motion without an evidentiary hearing to evaluate his new-trial claims in light of new evidence. Reversed and remanded.**

### Second Appellate District of Ohio

#### **State v. Davis, 2019-Ohio-1904**

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-1904.pdf>

**Plea was not knowing, intelligent, and voluntary for burglary conviction and was voidable since elements of offense read by state at plea hearing did not constitute the offense of burglary; trial court also erred by failing to give Crim.R. 11 advisement to defendant that he was making a complete admission to all elements of the offense.**

#### **Centerville v. Knab, 2019-Ohio-1903**

Restitution

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/2/2019/2019-Ohio-1903.pdf>

**Trial court erred in ordering restitution to police department because there was no evidence of any economic loss and since it is not a victim under R.C. 2929.28(A)(1); when responding in their official capacities, governmental agencies are not victims of crime. Also, sentence imposed for 4<sup>th</sup> degree misdemeanor exceeded maximum jail term and fine available.**

### Third Appellate District of Ohio

*Nothing to report.*

### Fourth Appellate District of Ohio

*Nothing to report.*

### Fifth Appellate District of Ohio

#### **State v. Ihinger, 2019-Ohio-1881**

Insufficient evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2019/2019-Ohio-1881.pdf>

In conviction of burglary and four counts of theft of firearms, there was insufficient evidence presented that the stolen firearms were operable and met the definition of “firearms” under R.C. 2923.11(B)(1); therefore, case is remanded to trial court to enter convictions for misdemeanor thefts as opposed to third-degree felonies and re-sentence accordingly.

### Sixth Appellate District of Ohio

#### **State v. Anderson, 2019-Ohio-1915**

Plea

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-1915.pdf>

Alford plea was not knowing, intelligent, and voluntary for attempted rape since trial court failed to substantially comply with Crim.R. 11 when it did not notify defendant of all the punitive consequences of entering plea and having a sex offender classification - specifically that he was prohibited from residing within 1,000 feet of a school, preschool, or child daycare, and that he would be subject to the community notification requirements of R.C. 2950.11.

#### **State v. Singer, 2019-Ohio-1922**

*Batson*

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/6/2019/2019-Ohio-1922.pdf>

The trial court erred in permitting the state to use one of its peremptory challenges to strike the only African-American juror on the venire; the state's race-neutral reasons for striking the juror, age and lack of education, were merely pretexts used to justify its discriminatory challenge.

### Seventh Appellate District of Ohio

*Nothing to report.*

### Eighth Appellate District of Ohio

***State v. Haynesworth, 2019-Ohio-1986***

Suppression: search

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2019/2019-Ohio-1986.pdf>

In conviction of weapons offenses, trial court erred by denying defendant's motion to suppress where officers did not have reasonable suspicion to make the initial investigatory stop; encounter was not consensual; and the stop was based on an anonymous 9-1-1 call which was not admitted into evidence, not in the record, not verified, and contained no description of the men.

### Ninth Appellate District of Ohio

***State v. Henderson, 2019-Ohio-1974***

Suppression: search warrant invalid

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2019/2019-Ohio-1974.pdf>

In conviction of illegal cultivation of marijuana, trial court erred by denying defendant's motion to suppress the thermal imaging scan and search of his residence. The affidavit supporting the warrant for the scan did not provide a substantial basis for concluding that probable cause existed; and since the affidavit supporting the warrant to search the residence was

partially based on the results of the illegal thermal scan which must be stricken from the affidavit, the remaining information in the affidavit was not enough to support a determination that probable cause existed.

## Tenth Appellate District of Ohio

**State v. T.K., 2019-Ohio-1967**

Evidence

Full Decision:

<https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2019/2019-Ohio-1967.pdf>

In conviction for violation of a protection order, “trial court erred when it permitted a sheriff’s deputy to testify regarding the usual and appropriate conduct of pro se litigants outside protection order hearings but refused, on relevance grounds, to take testimony on the same subject from a knowledgeable [lawyer] witness who sought to testify on behalf of the defendant.”

## Eleventh Appellate District of Ohio

*Nothing to report.*

## Twelfth Appellate District of Ohio

*Nothing to report.*

## Supreme Court of Ohio

*Nothing to report.*

## Sixth Circuit Court of Appeals

**United State v. Acosta/Morales-Montanez, Nos. 18-5207/5212**

Prosecutorial Misconduct

Full Decision:

<http://www.opn.ca6.uscourts.gov/opinions.pdf/19a0089p-06.pdf>

Because remarks made by the prosecutor rose to the level of flagrant misconduct, defendants were deprived of a fair trial; convictions and sentences vacated and remanded for a new trial.

**Supreme Court of the United States**

*Nothing to report.*