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Criminal Justice Updates - November 2020

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Abstract

The Criminal Justice Update is a monthly newsletter created by the Adams County Bar Foundation Fellow providing updates in criminal justice policy coming from Pennsylvania's courts and legislature as well as the US Supreme Court.

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Disciplines

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CRIMINAL JUSTICE UPDATE

A monthly newsletter produced by the ACBA Fellow at Gettysburg College

November 2020

Keep up to date with developments in criminal law, criminal procedure, and victims issues via this monthly newsletter.

Comments or questions? Contact Haley Shultz at shulha02@gettysburg.edu.

Updates from PA Governor's Office

House Bill 1747—The protection of Second Amendment Rights during declarations of emergency (Dowling)

Vetoed by the Governor, Nov. 25, 2020; Veto No. 15

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=H&type=B&bn=1747

"Under Title 18, a declaration of emergency limits, among other things, the Second Amendment rights of law abiding citizens. During an emergency, 'no person shall carry a firearm upon the public streets or upon any public property…' with the exemption of those licensed to carry a firearm under section 6109, exempt from licensing under section 6106(b), or 'actively engaged in defense of that person's life or property from peril or threat.' An argument could be made that this declaration of emergency would limit Commonwealth residents' right to open carry. In addition, Title 35 allows for the complete suspension of all firearm sales during an emergency as well." This legislation would repeal those requirements.

House Bill 616— Carfentanil on the list of Schedule II Controlled Substances (Owlett)

Approved by the Governor, Nov. 25, 2020; Act No. 117

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=H&type=B&bn=616

"An Act amending the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, further providing for schedules of controlled substances."

House Bill 1538—Amending the Parole Code (White) **Approved by the Governor, Nov. 25, 2020; Act No. 124**

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=H&type=B&bn=1538

This legislation requires "those convicted of rape, human trafficking, sexual assault, involuntary deviate sexual intercourse, incest, among other sex offenses, to wait three years before re-applying for parole. In addition, the bill provides that offenders required to register under the Sexual Offender Registration Act similarly wait three years to re-apply for parole."

Senate Bill 530—Protecting Student Sexual Assault Victims (Martin)

Approved by the Governor, Nov. 3, 2020

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=S&type=B&bn=530

"An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, in pupils and attendance, providing for students convicted or adjudicated delinquent of sexual assault; in safe schools, further

providing for safe schools advocate in school districts of the first class; and, in educational tax credits, further providing for school participation in program."

This legislation requires "a student who is convicted or adjudicated delinquent of sexual assault to be expelled at the victim's request, if they are enrolled in the same K-12 school district."

Senate Bill 976—Veterans Courts (Regan) **Approved by the Governor, Nov. 3, 2020**
https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=S&type=B&bn=976

"This legislation "will codify Veterans Courts into law, allow Veterans Courts to permit participation by Veterans from adjacent counties, and allow county common pleas courts that have other problem-solving courts to establish 'Veterans Tracks' – programs that utilize some components of a Veterans Court."

Updates from the PA Legislature

Criminal Law & Procedure

House Bill 916— Reducing Recidivism for DUI Offenders (Stephens) **Final passage, Nov. 19, 2020 [House]**
https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2019&sind=0&body=H&type=B&bn=916

"An Act mending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, in general provisions, further providing for definitions; in licensing of drivers, further providing for suspension of operating privilege, for the offense of driving while operating privilege is suspended or revoked and for ignition interlock limited license and providing for Relief from Administrative Suspension Program; and, in driving after imbibing alcohol or utilizing drugs, further providing for penalties, for ignition interlock, for prior offenses, for Accelerated Rehabilitative Disposition, for drug and alcohol assessments and for mandatory sentencing and providing for substance monitoring program. This act may be referred to as Deana's Law."

Updates from the Courts

U.S. Supreme Court

Criminal Law & Procedure

DERAY MCKESSON v. JOHN DOE **DECIDED: November 2, 2020**
https://www.supremecourt.gov/opinions/20pdf/19-1108_8n5a.pdf

"Petitioner DeRay Mckesson organized a demonstration in Baton Rouge, Louisiana, to protest a shooting by a local police officer. The protesters, allegedly at Mckesson's direction, occupied the highway in front of the police headquarters. As officers began making arrests to clear the highway, an unknown individual threw a 'piece of concrete or a similar rock-like object,' striking respondent Officer Doe in the face. 945 F. 3d 818, 823 (CA5 2019). Officer Doe suffered devastating injuries in the line of duty, including loss of teeth and brain trauma.

Though the culprit remains unidentified, Officer Doe sought to recover damages from Mckesson on the theory that he negligently staged the protest in a manner that caused the assault. The District Court dismissed the negligence claim as barred by the First Amendment. 272 F. Supp. 3d 841, 847–848 (MD La. 2017)."

"The question presented for our review is whether the theory of personal liability adopted by the Fifth Circuit violates the First Amendment. When violence occurs during activity protected by the First Amendment, that provision mandates 'precision of regulation' with respect to 'the grounds that may give rise to damages liability' as well as 'the persons who may be held accountable for those damages.' Claiborne Hardware, 458 U. S., at 916–917 (internal quotation marks omitted). Mckesson contends that his role in leading the protest onto the highway, even if negligent and punishable as a misdemeanor, cannot make him personally liable for the violent act of an individual whose only association with him was attendance at the protest."

"First, the dispute presents novel issues of state law peculiarly calling for the exercise of judgment by the state courts. See Lehman Brothers, 416 U. S., at 391. To impose a duty under Louisiana law, courts must consider 'various moral, social, and economic factors,' among them 'the fairness of imposing liability,' 'the historical development of precedent,' and 'the direction in which society and its institutions are evolving.' Posecai, 752 So. 2d, at 766. 'Speculation by a federal court about' how a state court would weigh, for instance, the moral value of protest against the economic consequences of withholding liability 'is particularly gratuitous when the state courts stand willing to address questions of state law on certification.' Arizonans for Official English v. Arizona, 520 U. S. 43, 79 (1997) (internal quotation marks and alteration omitted).

Second, certification would ensure that any conflict in this case between state law and the First Amendment is not purely hypothetical. The novelty of the claim at issue here only underscores that '[w]arnings against premature adju-
Cite as: 592 U. S. ____ (2020) 5 Per Curiam dication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law.' Ibid. The Louisiana Supreme Court, to be sure, may announce the same duty as the Fifth Circuit. But under the unusual circumstances we confront here, we conclude that the Fifth Circuit should not have ventured into so uncertain an area of tort law—one laden with value judgments and fraught with implications for First Amendment rights— without first seeking guidance on potentially controlling Louisiana law from the Louisiana Supreme Court. We express no opinion on the propriety of the Fifth Circuit certifying or resolving on its own any other issues of state law that the parties may raise on remand.

We therefore grant the petition for writ of certiorari, vacate the judgment of the United States Court of Appeals for the Fifth Circuit, and remand the case to that court for further proceedings consistent with this opinion."

TRENT MICHAEL TAYLOR v. ROBERT RIOJAS, ET AL. **DECIDED: November 2, 2020**
https://www.supremecourt.gov/opinions/20pdf/19-1261_bq7c.pdf

"Petitioner Trent Taylor is an inmate in the custody of the Texas Department of Criminal Justice. Taylor alleges that, for six full days in September 2013, correctional officers confined him in a pair of shockingly unsanitary cells.1 The first cell was covered, nearly floor to ceiling, in "'massive amounts' of feces": all over the floor, the ceiling, the window, the walls, and even "'packed inside the water faucet.'" Taylor v. Stevens, 946 F. 3d 211, 218 (CA5 2019). Fearing that his food and water would be contaminated, Taylor did not eat or drink for nearly four days. Correctional officers then moved Taylor to a second, frigidly cold cell, which was equipped with only a clogged drain in the floor to dispose of bodily wastes. Taylor held his bladder for over 24 hours, but he eventually (and involuntarily) relieved himself, causing the drain to overflow and raw sewage to spill across the floor. Because the cell lacked a bunk, and because Taylor was confined without clothing, he was left to sleep naked in sewage.

The Court of Appeals for the Fifth Circuit properly held that such conditions of confinement violate the Eighth Amendment's prohibition on cruel and unusual punishment. But, based on its assessment that '[t]he law wasn't clearly established' that 'prisoners couldn't be housed in cells teeming with human waste' 'for only six days,' the court concluded that the prison officials responsible for Taylor's confinement did not have "'fair warning' that their specific acts were unconstitutional." 946 F. 3d, at 222 (quoting Hope v. Pelzer, 536 U. S. 730, 741 (2002)).

The Fifth Circuit erred in granting the officers qualified immunity on this basis. 'Qualified immunity shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted.' Brosseau v. Haugen, 543 U. S. 194, 198 (2004) (per curiam). But no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time. See Hope, 536 U. S., at 741 (explaining that "'a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question'" (quoting United States v. Lanier, 520 U. S. 259, 271 (1997))); 536 U. S., at 745 (holding that '[t]he obvious cruelty inherent' in putting inmates in certain wantonly 'degrading and dangerous' situations provides officers 'with some notice that their alleged conduct violate[s]' the Eighth Amendment). The Fifth Circuit identified no evidence that the conditions of Taylor's confinement were compelled by necessity or exigency. Nor does the summary-judgment record reveal any reason to suspect that the conditions of Taylor's confinement could not have been mitigated, either in degree or duration. And although an officer-by-officer analysis will be necessary on remand, the record suggests that at least some officers involved in Taylor's ordeal were deliberately indifferent to the conditions of his cells. See, e.g., 946 F. 3d, at 218 (one officer, upon placing Taylor in the first feces-covered cell, remarked to another that Taylor was "'going to have a long weekend'"); ibid., and n. 9 (another officer, upon placing Taylor in the second cell, told Taylor he hoped Taylor would "'f***ing freeze'").

Confronted with the particularly egregious facts of this case, any reasonable officer should have realized that Taylor's conditions of confinement offended the Constitution.2 We therefore grant Taylor's petition for a writ of certiorari, vacate the judgment of the Court of Appeals for the Fifth Circuit, and remand the case for further proceedings consistent with this opinion."

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. MELVIN KNIGHT **DECIDED: November 18, 2020**
http://www.pacourts.us/assets/opinions/Supreme/out/J-24-2020mo%20-%20104607661120024229.pdf?cb=1

"Melvin Knight appeals the judgment of sentence of death imposed by the Westmoreland County Court of Common Pleas following his second penalty trial for his role in the 2010 torture and murder of Jennifer Daugherty ("the Victim"), a 30–year-old intellectually disabled woman."

"As the jury found that the aggravating circumstances outweighed the mitigating circumstances, Appellant's sentence complies with the statutory mandate for the imposition of a sentence of death. See id. § 9711(c)(1)(iv). Accordingly, there are no grounds upon which to vacate Appellant's death sentence pursuant to Section 9711(h)(3). For all of the above reasons, we affirm Appellant's sentence of death."

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. EDDIE MOJICA **FILED: November 20, 2020**
http://www.pacourts.us/assets/opinions/Superior/out/J-S35013-200%20-%20104611966120395661.pdf?cb=1

"Eddie Mojica appeals from the August 1, 2019 order denying his petition for relief under the Post-Conviction Relief Act ("PCRA"). We affirm."

"Accordingly, we are constrained to conclude that Appellant has failed to establish that he requested trial counsel file a direct appeal on his behalf. As such, no relief is due on his claim for relief."

COMMONWEALTH OF PENNSYLVANIA v. NATHANIAL RAY PRICE **FILED: November 20, 2020**
http://www.pacourts.us/assets/opinions/Superior/out/J-S30025-200%20-%20104611945120392352.pdf?cb=1

"The Commonwealth appeals from the order granting in part Nathanial Ray Price's motion to suppress. It maintains that the trial court erred in suppressing Price's cell phone records. We reverse."

"In this case, there is no evidence that the omission of the additional information establishing probable cause from the warrant application resulted from police misconduct. The only question is whether the police would have inevitably discovered the evidence by lawful means. We conclude the Commonwealth has carried its burden to establish that they would have done so. Police here left out of the affidavit of probable cause information that they had in their possession at the time, and that would have enabled them to obtain a proper, second warrant. See Commonwealth v. Henderson, 47 A.3d 797, 799 (Pa. 2012). We therefore reverse the suppression order."

COMMONWEALTH OF PENNSYLVANIA v. JOSHUA HEADLEY **FILED: November 19, 2020**
http://www.pacourts.us/assets/opinions/Superior/out/J-S37004-200%20-%20104610297120288306.pdf?cb=1

"Appellant, Joshua Headley, appeals from the judgment of sentence entered on December 6, 2019, in the Chester County Court of Common Pleas. We affirm."

"... we conclude that the evidence was sufficient to prove beyond a reasonable doubt that Appellant committed the crimes of REAP and discharging a firearm into an occupied structure. Therefore, we affirm the judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. CURTIS DAVIS **FILED: November 19, 2020**
http://www.pacourts.us/assets/opinions/Superior/out/J-A20021-200%20-%20104610150120263103.pdf?cb=1

"Appellant, Curtis Davis, appeals from an order entered on November 12, 2019, denying his motion to dismiss charges he alleges the Commonwealth pursued in violation of the principles of compulsory joinder and his rights against double jeopardy. We affirm, but remand with instructions."

"We therefore conclude that, while the Commonwealth violated Rule 544 when it re-filed the complaint against Appellant, Appellant is not entitled to relief. MDJ Caulfield lacked jurisdiction under Rule 542(F) and Rule 543(F) to adjudicate the six summary offenses. As such, the October 3, 2019 summary adjudication was a legal nullity and Appellant's judgment of sentence is void ab initio. For this same reason, the re-filing of the criminal complaint against J-A20021-20 - 31 - Appellant without first challenging MDJ Caulfield's adjudication did not violate the principles of double jeopardy or compulsory joinder. While we do not condone the Commonwealth's actions, we are constrained to affirm the trial court's order denying Appellant's motion to dismiss. On remand, we direct the trial court to vacate Appellant's October 3, 2019 judgment of sentence as void ab initio."

IN THE INTEREST OF: C.B., A MINOR APPEAL OF: C.B **FILED: November 06, 2020**
http://www.pacourts.us/assets/opinions/Superior/out/J-A26027-200%20-%20104597544118940571.pdf?cb=1

"C.B. appeals from the dispositional order1 adjudicating him delinquent on more than 100 counts of possessing and viewing child pornography2 (F-3) on his school-issued computer. The court determined that C.B. was in need of supervision and ordered him to serve a period of probation with conditions tailored to the committed offenses. Specifically, the juvenile court concluded "that there was insufficient credible evidence to the contrary to rebut the

statutory presumption within the Juvenile Act, 42 Pa.C.S. § 6341(b), that the commission of a felony shall be sufficient to sustain th[e] finding [that a juvenile is in need of treatment, supervision, or rehabilitation]."3 After careful review, we affirm."

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