



3-2021

Criminal Justice Update - March 2021

Haley B. Shultz

Gettysburg College, shulha02@gettysburg.edu

Follow this and additional works at: <https://cupola.gettysburg.edu/cjupdates>



Part of the [Criminology and Criminal Justice Commons](#), and the [Public Affairs, Public Policy and Public Administration Commons](#)

Share feedback about the accessibility of this item.

Recommended Citation

Shultz, Haley B., "Criminal Justice Update - March 2021" (2021). *Criminal Justice Updates*. 7.
<https://cupola.gettysburg.edu/cjupdates/7>

This is the author's version of the work. This publication appears in Gettysburg College's institutional repository by permission of the copyright owner for personal use, not for redistribution. Cupola permanent link:
<https://cupola.gettysburg.edu/cjupdates/7>

This open access newsletter is brought to you by The Cupola: Scholarship at Gettysburg College. It has been accepted for inclusion by an authorized administrator of The Cupola. For more information, please contact cupola@gettysburg.edu.

Criminal Justice Update - March 2021

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.

Contents:

- Updates from PA Governor's Office (no updates this month)
- Updates from the PA Legislature
- Updates from the Courts
 - U.S. Supreme Court: Criminal Law & Procedure
 - PA Supreme Court: Criminal Law & Procedure
 - PA Superior Court: Criminal Law & Procedure

Keywords

Criminal Justice Update, Adams County Bar Foundation, ACBF

Disciplines

Criminology and Criminal Justice | Public Affairs, Public Policy and Public Administration



March 2021

CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at
Gettysburg College

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
shulhao2@gettysburg.edu.

Updates from PA Governor's Office

**No updates this month*

Updates from the PA Legislature

Criminal Law & Procedure

Senate Bill 411— Consolidation of the Department of Corrections and the Board of Probation and Parole

Final passage in the Senate, Mar. 24, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=o&body=S&type=B&bn=411>

"An Act amending Titles 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in judicial boards and commissions, further providing for definitions and for publication of guidelines for sentencing, resentencing and parole, risk assessment instrument and recommitment ranges following revocation;

in depositions and witnesses, further providing for confidential communications involving law enforcement officers and for confidential communications to peer support members;

in juvenile matters, further providing for inspection of court files and records;

in particular rights and immunities, further providing for immunity of State parole officers and for immunity of program administrators and supervisors;

in post-trial matters, further providing for postconviction DNA testing;

in sentencing, further providing for mandatory period of probation for certain sexual offenders, for disposition of persons found guilty but mentally ill, for information required upon commitment and subsequent disposition, for judicial power to release inmates, for transfer of inmates in need of medical treatment, for applicability, for registry, for initial registration, for duty to inform, for enforcement, for assessments, for verification by sexual offenders and Pennsylvania State Police, for administration, for global positioning system technology, for immunity for good faith conduct, for Pennsylvania State Police, for duties of probation and parole officials, for board, for annual performance audit, for applicability, for registration, for registration procedures and applicability, for assessments, for administration, for global positioning system technology, for immunity for good faith conduct, for duties of Pennsylvania State Police, for duties of Pennsylvania Board of Probation and Parole, for board and for annual performance audit;

in other criminal provisions, further providing for supervisory relationship to offenders;

in preliminary provisions, further providing for definitions;

in general administration, providing for powers of peace officers;

in community corrections centers and community corrections facilities, further providing for definitions, for department, for offenders who may be housed, for authority of Commonwealth employees, for authority of chairman and for escape and providing for certain offenders residing in group-based homes and for reporting;

in Pennsylvania Board of Probation and Parole, further providing for definitions, for operation of parole system generally, for Pennsylvania Parole Board, for board chairperson, for board action, for meetings and for offices, repealing provisions relating to district directors, to district office employees, to disciplinary action and to certain offenders residing in group-based homes, further providing for general powers of board and for specific powers of board involving parolees, repealing provisions relating to probation services, further providing for sentencing court to transmit records to board, for general criteria for parole by court, for right of access to inmates, for parole power, for violation of terms of parole, for parole procedure, for victim statements, testimony and participation in hearing, for general rules and special regulations and for early parole of inmates subject to Federal removal order and repealing provisions relating to definitions, to status as peace officers and to supervisory relationship to offenders;

providing for supervision of offenders and for agents;

in county probation officers' firearm education and training, further providing for definitions;

in Interstate Compacts, further providing for Interstate Compact for the Supervision of Adult Offenders application fee, for deputization and for supervision of persons paroled by other states;

providing for Board of Pardons;

conferring powers and imposing duties on the Department of Corrections;

providing for the transfer of functions, powers and duties of the Pennsylvania Board of Probation and Parole and for appropriations for the Office of Victim Advocate;

making related repeals;

and making editorial changes.”

House Bill 185—Cody’s Law to Protect Those That Cannot Protect Themselves

Final passage in the House, Mar. 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=o&body=H&type=B&bn=185>

“An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in assault, further providing for the offense of aggravated assault.”

This bill will “provide that any individual that intentionally causes bodily injury to a person with a physical or intellectual disability is guilty of aggravated assault, a felony of the second degree.”

House Bill 163— Upskirting: Justice for Children Victimized in Schools and Elsewhere

Final Passage in the House, Mar. 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=163>

“An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in other offenses, further providing for the offense of invasion of privacy.”

“Our legislation aims to dramatically increase the charges that can be brought against teachers and adults who victimize students and minors through upskirting, making the offense a felony of the third degree for a first violation and a felony of the second degree for subsequent offenses.”

House Bill 146— Markie’s Law

Final Passage in the House, Mar. 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=146>

“An Act amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in Pennsylvania Board of Probation and Parole, further providing for parole power.”

This legislation will “preclude the parole board from prematurely releasing an inmate at the expiration of his minimum sentence if the inmate was convicted of a violent offense while incarcerated.” It “will postpone consideration of a violent inmate’s parole until an additional 24 months following the inmate’s minimum release date for each conviction for a violent offense while incarcerated. In addition, [this] legislation will postpone consideration of an inmate’s parole an additional 12 months if the inmate attempts to escape, smuggles contraband, or retaliates or intimidates witnesses while incarcerated.”

House Bill 103— Harassment of Law Enforcement Officer

Final Passage in the House, Mar. 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=103>

“An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in assault, providing for the offense of harassment of law enforcement officer; and imposing penalties.”

“Currently, the Crimes Code creates an offense if the law enforcement officer comes into contact with another person’s bodily fluid only if the person is committed to a correctional facility or is being transported to a correctional facility. The Crimes Code does not address the scenario where a person deliberately spits on an officer or causes the officer to come into contact with other bodily fluids where such an act is the primary offense.”

“This bill provides that if a person intentionally or knowingly causes the officer to come into contact with saliva or other bodily fluid by throwing, tossing, or spitting the bodily fluid, the person would commit a criminal offense. If the individual knew, should have known, or believed such fluid or material had been obtained from an individual who was infected by a communicable disease the offense is a felony of the third degree. In any other situation the offense is graded as a misdemeanor of the first degree.”

House Bill 156— Amend the Tender Years Hearsay Act

Final Passage in the House, Mar. 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=156>

“An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in depositions and witnesses, further providing for admissibility of certain statements.”

This legislation “amends the Tender Years Hearsay Act to permit the introduction of hearsay statements, made by children 16 years of age or younger, concerning violent or sexual offenses. Currently, under the Act, such statements are admissible if the child was 12 years of age or younger at the time the statement was made and the court finds that the child is unavailable as a witness due to the substantial emotional distress that would render the child unable to reasonably communicate if forced to testify.”

Updates from the Courts

U.S. Supreme Court

Criminal Law & Procedure

Mays v. Hines

DECIDED: March 29, 2021

https://www.supremecourt.gov/opinions/20pdf/20-507_h315.pdf

“A Tennessee jury found Anthony Hines guilty of murdering Katherine Jenkins at a motel. Witnesses saw Hines fleeing in the victim’s car and wearing a bloody shirt, and his family members heard him admit to stabbing someone at the motel. But almost 35 years later, the Sixth Circuit held that Hines was entitled to a new trial and sentence because his attorney should have tried harder to blame another man. In reaching its conclusion, the Sixth Circuit disregarded the overwhelming evidence of guilt that supported the contrary conclusion of a Tennessee court. This approach plainly violated Congress’ prohibition on disturbing state-court judgments on federal habeas review absent an error that lies “beyond any possibility for fairminded disagreement.” *Shinn v. Kayer*, 592 U. S. ___, ___ (2020) (per curiam) (slip op., at 1); 28 U. S. C. §2254(d). We now reverse.”

Torres v. Madrid et al.

DECIDED: March 25, 2021

https://www.supremecourt.gov/opinions/20pdf/19-292_21p3.pdf

“Respondents Janice Madrid and Richard Williamson, officers with the New Mexico State Police, arrived at an Albuquerque apartment complex to execute an arrest warrant and approached petitioner Roxanne Torres, then standing near a Toyota FJ Cruiser. The officers attempted to speak with her as she got into the driver’s seat. Believing the officers to be carjackers, Torres hit the gas to escape. The officers fired their service pistols 13 times to stop Torres, striking her twice. Torres managed to escape and drove to a hospital 75 miles away, only to be airlifted back to a hospital in Albuquerque, where the police arrested her the next day. Torres later sought damages from the officers under 42 U. S. C. §1983. She claimed that the officers used excessive force against her and that the shooting constituted an unreasonable seizure under the Fourth Amendment. Affirming the District Court’s grant of summary judgment to the officers, the Tenth Circuit held that “a suspect’s continued flight after being shot by police negates a Fourth Amendment excessive-force claim.” 769 Fed. Appx. 654, 657.

Held: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.”

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. BETH ANN MASON

DECIDED: March 25, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-44-2020mo%20-%20104727284130797337.pdf?cb=1>

"In this appeal, we address the admissibility of audio evidence in a criminal trial under the Wiretapping and Electronic Surveillance Act ("Wiretap Act"), 18 Pa.C.S. §§ 5701-5782. More specifically, we examine whether the Wiretap Act deems inadmissible a covertly obtained audio recording of Appellee Beth Ann Mason ("Appellee") while she worked as a nanny in the home of the family that employed her. Because Appellee failed to demonstrate that she possessed a justifiable expectation that her oral communications would not be subject to interception by a recording device located in the children's bedrooms, we hold that the Wiretap Act does not preclude the Commonwealth from introducing these recordings as evidence at Appellee's trial for allegedly abusing the children in her care. Consequently, for the reasons that follow, we, in relevant part, reverse the Superior Court's judgment, which held that the trial court [J-44-2020] - 2 properly suppressed the subject audio recording. In addition, we remand the matter to the trial court for further proceedings."

COMMONWEALTH OF PENNSYLVANIA v. H.D.

DECIDED: March 25, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-105-2020mo%20-%20104727234130793256.pdf?cb=1>

"The Legislature has prescribed that a defendant is innocent of the crime of "interference with custody of children" when he or she believed that intrusive actions were necessary to spare the subject child from danger. In this appeal, the Commonwealth contends that the belief element of this offense should be construed to encompass only beliefs that are held reasonably."

"The order of the Superior Court is affirmed."

COMMONWEALTH OF PENNSYLVANIA v. ANTHONY SHAW

DECIDED: March 25, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-95-2020mo%20-%20104727129130788097.pdf?cb=2>

"In light of the statutory, one-year limitation on the time during which a petition for relief from a judgment of sentence may be filed under the Post Conviction Relief Act, difficult issues have arisen regarding the extent to which a petitioner's rule-based right to effective counsel in post-conviction matters may be vindicated. Presently, the Superior Court determined that certain redress may be afforded during post-conviction appeals, and the Commonwealth challenges this ruling."

"The order of the Superior Court is vacated, and the matter is remanded to the PCRA court, via the intermediate court, for further proceedings consistent with this opinion."

COMMONWEALTH OF PENNSYLVANIA v. INGRAM MOORE

DECIDED: March 25, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-55-2020mo%20-%20104727478130809638.pdf?cb=1>

"We granted review in this case to determine the propriety of raising a claim in a habeas corpus petition that the sentencing statute under which Appellant was sentenced is unconstitutionally vague, or if such a claim is properly considered an illegal sentence claim cognizable solely under the mandates of the Post-Conviction Relief Act (PCRA).¹ After careful consideration, we determine such a claim is an illegal sentence claim and must be brought in a PCRA petition."

COMMONWEALTH OF PENNSYLVANIA v. DEMETRIUS MAYFIELD

DECIDED: March 25, 2021

<http://www.pacourts.us/assets/opinions/Supreme/out/J-115-2020mo%20-%20104727445130819805.pdf?cb=1>

"In this probation revocation case, the trial court entered an order removing the District Attorney's Office and appointing a private criminal-defense attorney to represent the Commonwealth as a "special prosecutor." Because we conclude that the court lacked the authority to make such an appointment, we vacate the trial court's order and remand for further proceedings."

<http://www.pacourts.us/assets/opinions/Supreme/out/J-112-2020mo%20-%20104727442130807760.pdf?cb=1>

“This appeal concerns the application of the statutory compulsory joinder rules, which generally require a prosecutor to pursue, in a single proceeding, all known charges against a defendant arising from a single criminal episode occurring within the same judicial district, subject to enumerated exceptions. The exception in issue pertains when a court lacks jurisdiction over a defendant or the offense.”

“We hold that ‘the offense,’ in Section 112(1), means the offense that was the subject of an initial prosecution resulting in a conviction or acquittal. The ultimate purport, with respect to the summary-and-greater-offenses paradigm, is that the Commonwealth must generally assure that known offenses are consolidated at the common pleas level, when they arise out of a single criminal episode and occur in the same judicial district. See *Failor*, 564 Pa. at 649, 770 A.2d at 314. 9 Perhaps ironically, this is consistent with the *Campana* plurality’s policy perspective, also derived from the Model Penal Code, where this all began. See *Campana*, 452 Pa. at 253-54, 304 A.2d 441-42. The order of the Superior Court is reversed, and the matter is remanded for dismissal of the PWID charge.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

<http://www.pacourts.us/assets/opinions/Superior/out/J-A03033-210%20-%20104730837131111738.pdf?cb=1>

“Jonathan Rivera appeals from the judgment of sentence, entered in the Court of Common Pleas of Bradford County, after a jury convicted him of four counts of corruption of minors—course of conduct; three counts of indecent assault—person less than 13 years of age; two counts of indecent exposure; and one count each of criminal attempt to commit indecent assault—person less than 13 years of age, and endangering the welfare of a child (EWOC).

After careful review, we affirm in part, vacate in part and remand. Specifically, because the Commonwealth’s amendment to the criminal information unfairly prejudiced Rivera, we vacate Rivera’s convictions under Counts 21 and 22, and remand for a new trial. Additionally, because the jury did not find that Rivera’s EWOC conviction was the result of a course of Rivera’s conduct or that his actions resulted in a substantial risk of death or serious bodily injury, we remand for resentencing on Count 15. We affirm Rivera’s remaining convictions.”

<http://www.pacourts.us/assets/opinions/Superior/out/J-A27009-200%20-%20104729335130973050.pdf?cb=1>

“The Commonwealth appeals from the April 2, 2019 order entered in the Court of Common Pleas of Philadelphia County, granting the motion to suppress filed by Appellee, Steven Tillery. Upon review, we affirm.”

“We have summarized the evidence in accordance with *Cartegena* and *Millner* and we accept the suppression court’s credibility findings with respect to Officer Kanan. Further, we find no error in the court’s legal conclusion, i.e., that “[t]he police did not have reasonable suspicion or probable cause to stop the defendant and also remove him from the car.” Notes of Testimony, 4/2/19, at 3. Because the suppression court properly applied the law to the facts, we affirm the suppression court’s order. Order affirmed. Case remanded. Jurisdiction relinquished.”

<http://www.pacourts.us/assets/opinions/Superior/out/J-E01005-200%20-%20104725468130645853.pdf?cb=1>

"Appellant, Alexis Lopez, appeals from his April 27, 2018 judgment of sentence, which included the imposition of mandatory court costs. Appellant argues that he was entitled to a hearing under Pa.R.Crim.P. 706(C) to determine his ability to pay those court costs before the court imposed them at sentencing. We disagree. Instead, we hold that while a trial court has the discretion to hold an ability-to-pay hearing at sentencing, Rule 706(C) only requires the court to hold such a hearing when a defendant faces incarceration for failure to pay court costs previously imposed on him. We therefore affirm Appellant's judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. KEITH ANTHONY ROSARIO

FILED: March 23, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-A28023-200%20-%20104725673130665560.pdf?cb=1>

"Keith Anthony Rosario (Appellant) appeals from the judgment of sentence imposed after a jury convicted him of one count of attempted homicide, two counts of aggravated assault, two counts of kidnapping, and one count of conspiracy to commit criminal homicide, aggravated assault, and kidnapping."

"Denial of suppression affirmed. Convictions affirmed. Judgment of sentence vacated. Case remanded for resentencing consistent with this decision. Application for judicial notice denied. Application to strike granted. Jurisdiction relinquished."

"Williams' second claim on appeal fails. Judgment of sentence affirmed."

COMMONWEALTH OF PENNSYLVANIA v. JOSEPHE MURRAY

FILED: March 19, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-A27012-200%20-%20104722413130398214.pdf?cb=1>

"Appellant, Josephe Murray, appeals from his judgment of sentence of life imprisonment plus 26-52 years' imprisonment for first-degree murder and related offenses. Appellant's principal contention is that the trial court erred in denying his challenge to the prosecutor's use of peremptory strikes against two prospective jurors under Batson v. United States, 476 U.S. 79 (1986). We hold that (1) Appellant failed to establish prima facie evidence of a Batson violation, (2) the prosecutor gave reasonable, race-neutral reasons for excluding both prospective jurors, and (3) the record does not establish that the prosecutor engaged in purposeful discrimination. Accordingly, we affirm."

COMMONWEALTH OF PENNSYLVANIA v. ROBERT LOUIS WENZEL

FILED: March 17, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-S43030-200%20-%20104719814130146427.pdf?cb=1>

"Appellant, Robert Louis Wenzel, appeals from the judgment of sentence entered on November 1, 2019, in the Warren County Court of Common Pleas. We affirm."

COMMONWEALTH OF PENNSYLVANIA v. PATRICK SEISIRO SOLOMON

FILED: March 16, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-E02005-200.pdf?cb=2>

"A penny saved is a penny earned. But what is the worth of the coin once it is stolen? Patrick Seisiro Solomon stole collectible coins and now wants to cap his restitution liability at their market value at the time of the crime. The issue before us is whether the sentencing court abused its discretion in setting the restitution amount for the coins at their acquisition cost. As we conclude that the sentencing court committed no error of law or abuse of discretion in reaching its determination, we affirm."

COMMONWEALTH OF PENNSYLVANIA v. DAMEON ARRINGTON

FILED: March 8, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-S49021-200%20-%20104709315129316531.pdf?cb=1>

"Appellant, Dameon Arrington, appeals from the November 20, 2019 Judgment of Sentence entered in the Court of Common Pleas of Clarion County after a jury convicted him of various offenses including Involuntary Manslaughter, Conspiracy to Commit Involuntary Manslaughter, and Drug Delivery Resulting in Death ("DDRD"). 1 Appellant argues

that Conspiracy to Commit Involuntary Manslaughter is not a cognizable offense in Pennsylvania and further alleges that the trial court erred by denying his motions to transfer venue and remove a juror. After careful review, we affirm.”

[Contact Me](#)

Haley Shultz

Telephone: 484-798-3040

Email: shulhao2@gettysburg.edu