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Criminal Justice Update - May 2021

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Criminal Justice Update - May 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
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 - PA Superior Court: Criminal Law & Procedure

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Disciplines

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CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at
Gettysburg College

May 2021

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
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Updates from PA Governor's Office

**No updates this month*

Updates from the PA Legislature

Criminal Law & Procedure

House Bill 231— Protecting Human Trafficking Victims

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=231>

House Bill 246 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes "to prohibit defendants from introducing evidence of a human trafficking victim's past sexual victimization and allegations of past sexual victimization in any prosecution arising under Chapter 30 (relating to human trafficking)."

House Bill 753— Increase Grading for Trafficking of Infants

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=753>

House Bill 753 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes and "reclassifies the offense of trafficking of infants as a first-degree felony. It is currently a first-degree misdemeanor."

House Bill 246— Protecting Human Trafficking Victims

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=246>

House Bill 246 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes "to prohibit defendants from introducing evidence of a human trafficking victim's past sexual victimization and allegations of past sexual victimization in any prosecution arising under Chapter 30 (relating to human trafficking)."

House Bill 580— Re-Introduction of Expert Testimony in Sexual and Domestic Violence Cases (Formerly HB 2175)

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=580>

House Bill 580 would amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes "to expand the list of offenses where an expert may testify about the dynamics of sexual and domestic violence."

House Bill 1096— Reforming Venue for Human Trafficking Victims to Sue Their Offenders

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=H&type=B&bn=1096>

House Bill 1096 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes. “The Commonwealth’s human trafficking protections include a provision specifically authorizing civil lawsuits to be brought by victims against any person who participates in the human trafficking of the victim, as well as against those who recruit, profit or maintain the victim in the sex trade, or who abuse or otherwise physically harm victims. Some of those cases may be brought in the county where the victim resides, while others may also be filed in a county where the human trafficking violations occurred.” This bill will “allow all of these lawsuits to be brought either where the victim resides or where the violations occurred.”

House Bill 1130— Requiring Sexual Offender Registration for Those Convicted of Human Trafficking for Sexual Servitude

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=H&type=B&bn=1130>

House Bill 1130 would amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to ensure that “human traffickers who subject their victims to sexual servitude are required to register under the state’s Sexual Offender Registration and Notification Act (SORNA).”

House Bill 1147— Protecting Victims of Human Trafficking (Sex Offender Treatment)

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=H&type=B&bn=1147>

House Bill 1147 would amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes by expanding “the list of sexual offenses that require offenders to attend and participate in a Department of Corrections program of counseling and therapy designed for incarcerated sex offenders.”

House Bill 231—Expanding the list of prohibited activities that constitute the crime of unlawful contact with a minor

Final Passage in the House, May 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=H&type=B&bn=231>

This act would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to “add certain prohibited activities that, if committed, constitute the crime of unlawful contact with a minor.”

Senate Bill 521— Criminalizing the Act of “Upskirting”

Final Passage in the Senate, May 24, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=S&type=B&bn=521>

Senate Bill 521 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to make “upskirting” “a third degree felony for a first offense and a second degree felony for subsequent offenses of invasion of privacy of a minor when committed by a person of authority, such as a teacher.”

Updates from the Courts

U.S. Supreme Court

Criminal Law & Procedure

Edwards v. Vannoy, Warden

DECIDED: May 17, 2021

https://www.supremecourt.gov/opinions/20pdf/19-5807_new2_jhek.pdf

"In 2007, a Louisiana jury found petitioner Thedrick Edwards guilty of armed robbery, rape, and kidnapping. At the time, Louisiana law permitted non-unanimous jury verdicts if at least 10 of the 12 jurors found the defendant guilty. In Edwards's case, 11 of 12 jurors returned a guilty verdict as to some crimes, and 10 of 12 jurors returned a guilty verdict as to others. After Edwards's conviction became final on direct review, Edwards filed a federal habeas corpus petition, arguing that the non-unanimous jury verdict violated his constitutional right to a unanimous jury. The District Court rejected Edwards's claim as foreclosed by *Apodaca v. Oregon*, 406 U. S. 404, and the Fifth Circuit denied a certificate of appealability. While Edwards's petition for a writ of certiorari was pending, the Court repudiated *Apodaca* and held that a state jury must be unanimous to convict a criminal defendant of a serious offense. *Ramos v. Louisiana*, 590 U. S. _____. Edwards now argues that the *Ramos* jury-unanimity rule applies retroactively on federal collateral review.

Held: The *Ramos* jury-unanimity rule does not apply retroactively on federal collateral review. Pp. 5–20. (a) A new rule of criminal procedure applies to cases on direct review, even if the defendant's trial has already concluded. But the Court has stated that new rules of criminal procedure ordinarily do not apply retroactively on federal collateral review. The Court has stated that a new procedural rule will apply retroactively on federal collateral review only if the new rule constitutes a "watershed" rule of criminal procedure. *Teague v. Lane*, 489 U. S. 288, 311 (plurality opinion). When the *Teague* Court first articulated that "watershed" exception, however, the Court stated that it was "unlikely" that such watershed "components of basic due process have yet to emerge." *Id.*, at 313. And in the 32 years since *Teague*, the Court has never found that any new procedural rule actually satisfies the purported exception. Pp. 5–7. (b) To determine whether *Ramos* applies retroactively on federal collateral review, the Court must first ask whether *Ramos* announced a new rule of criminal procedure and, if so, whether that rule falls within an exception for watershed rules of criminal procedure that apply retroactively on federal collateral review. The Court concludes that *Ramos* announced a new rule and that the jury-unanimity rule announced by *Ramos* does not apply retroactively on federal collateral review. Pp. 8–14. (1) The *Ramos* jury-unanimity rule is new because it was not "dictated by precedent existing at the time the defendant's conviction became final," *Teague*, 489 U. S., at 301, or "apparent to all reasonable jurists" at that time, *Lambrix v. Singletary*, 520 U. S. 518, 528. On the contrary, before *Ramos*, many courts interpreted *Apodaca* to allow for non-unanimous jury verdicts in state criminal trials. And the *Ramos* Court expressly repudiated *Apodaca*. Pp. 8–10. (2) The new rule announced in *Ramos* does not qualify as a "watershed" procedural rule that applies retroactively on federal collateral review. In an attempt to distinguish *Ramos* from the long line of cases where the Court has declined to retroactively apply new procedural rules, Edwards emphasizes three aspects of *Ramos*: (i) the significance of the jury-unanimity right; (ii) *Ramos*'s reliance on the original meaning of the Constitution; and (iii) the effect of *Ramos* in preventing racial discrimination in the jury process. But the Court has refused to retroactively apply other momentous cases with similar attributes. In *DeStefano v. Woods*, 392 U. S. 631, the Court declined to retroactively apply *Duncan v. Louisiana*, 395 U. S. 145, even though *Duncan* established the jury right itself. In *Whorton v. Bockting*, 549 U. S. 406, the Court declined to retroactively apply *Crawford v. Washington*, 541 U. S. 36, even though *Crawford* relied on the original meaning of the Sixth Amendment to restrict the use of hearsay evidence against criminal defendants. And in *Allen v. Hardy*, 478 U. S. 255 (per curiam), the Court declined to retroactively apply *Batson v. Kentucky*, 476 U. S. 79, even though *Batson* held that state prosecutors may not discriminate on the basis of race when exercising individual peremptory challenges. There is no good rationale for treating *Ramos* differently from *Duncan*, *Crawford*, and *Batson*.

Pp. 10–14. (3) Given the Court’s numerous precedents holding that landmark and historic decisions announcing new rules of criminal procedure do not apply retroactively on federal collateral review, the Court acknowledges that the watershed exception is moribund and that no new rules of criminal procedure can satisfy the purported exception for watershed rules. Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice, so no reliance interests can be affected by forthrightly acknowledging reality. The watershed exception must “be regarded as retaining no vitality.” *Herrera v. Wyoming*, 587 U. S. ___, ___ (slip op., at 11) (internal quotation marks omitted). Pp. 14–15. Affirmed.”

Caniglia v. Strom et al.

DECIDED: May 17, 2021

https://www.supremecourt.gov/opinions/20pdf/20-157_8mjp.pdf

“During an argument with his wife, petitioner Edward Caniglia placed a handgun on the dining room table and asked his wife to “shoot [him] and get it over with.” His wife instead left the home and spent the night at a hotel. The next morning, she was unable to reach her husband by phone, so she called the police to request a welfare check. The responding officers accompanied Caniglia’s wife to the home, where they encountered Caniglia on the porch. The officers called an ambulance based on the belief that Caniglia posed a risk to himself or others. Caniglia agreed to go to the hospital for a psychiatric evaluation on the condition that the officers not confiscate his firearms. But once Caniglia left, the officers located and seized his weapons. Caniglia sued, claiming that the officers had entered his home and seized him and his firearms without a warrant in violation of the Fourth Amendment. The District Court granted summary judgment to the officers. The First Circuit affirmed, extrapolating from the Court’s decision in *Cady v. Dombrowski*, 413 U. S. 433, a theory that the officers’ removal of Caniglia and his firearms from his home was justified by a “community caretaking exception” to the warrant requirement.

Held: Neither the holding nor logic of *Cady* justifies such warrantless searches and seizures in the home. *Cady* held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. In reaching this conclusion, the Court noted that the officers who patrol the “public highways” are often called to discharge noncriminal “community caretaking functions,” such as responding to disabled vehicles or investigating accidents. 413 U. S., at 441. But searches of vehicles and homes are constitutionally different, as the *Cady* opinion repeatedly stressed. *Id.*, at 439, 440– 442. The very core of the Fourth Amendment’s guarantee is the right of a person to retreat into his or her home and “there be free from unreasonable governmental intrusion.” *Florida v. Jardines*, 569 U. S. 1, 6. A recognition of the existence of “community caretaking” tasks, like rendering aid to motorists in disabled vehicles, is not an open-ended license to perform them anywhere. Pp. 3–4. 953 F. 3d 112, vacated and remanded.”

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. ERIC ROGERS

DECIDED: May 18, 2021

<https://www.pacourts.us/storage/opinions/Supreme/out/J-90-2020mo%20-%20104778268135484054.pdf?cb=1>

“The primary issue raised in this discretionary appeal is whether the trial court properly excluded evidence that two of Appellant’s rape victims had a history of prostitution convictions, where Appellant’s defense included a contention that the encounters were consensual instances of prostitution.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. ANGELO WEEDEN

FILED: May 26, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-A09032-210%20-%20104787654136253330.pdf?cb=1>

“Angelo Weeden (Weeden) appeals from the judgment of sentence imposed following his jury conviction in the Court of Common Pleas of Allegheny County (trial court) of one count each of aggravated assault, person not to possess a firearm, carrying a firearm without a license, propulsion of missiles into an occupied vehicle and three counts of recklessly endangering another person. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. ADIEL SANCHEZ-FROMETA

FILED: May 25, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-A07032-210%20-%20104786608136137113.pdf?cb=1>

“Appellant Adiel Sanchez-Frometa¹ appeals from the judgment of sentence entered by the Court of Common Pleas of Franklin County after a jury convicted Appellant of second-degree murder and related offenses for crimes he committed as a juvenile. ² Appellant argues that the trial court did not have the authority to sentence him to life imprisonment without parole under 18 Pa.C.S.A. § 1102.1(c).

As discussed in more detail *infra*, as the plain language of Section 1102.1 is clear and unambiguous, we decline to uphold the trial court’s interpretation of the statute which essentially adds language where the Legislature did not choose to do so. After careful review, we vacate Appellant’s sentence and remand for resentencing.”

COMMONWEALTH OF PENNSYLVANIA v. JONATHAN RIVERA

FILED: May 24, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-A03033-210%20-%20104784967135988591.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.”

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER MICHAEL CRAWFORD

FILED: May 18, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-S10033-210%20-%20104778993135541583.pdf?cb=1>

“Christopher Michael Crawford (Crawford) appeals the judgment of sentence entered in the Court of Common Pleas of Lackawanna County (trial court) following a bench trial on numerous fraud-related charges in three consolidated cases. Essentially, he was found guilty of lying about his status as a military veteran in order to join and defraud a post of the American Legion. Crawford was sentenced to a prison term of 6 to 12 years, followed by four years of probation. He now argues that the offense of misrepresenting veteran status is unconstitutional, that the evidence as to all of his convictions is legally insufficient, and that his sentence was overly harsh and excessive as to all counts. We affirm in part, reverse in part, and remand for resentencing.”

COMMONWEALTH OF PENNSYLVANIA v. VICTOR ROJAS-ROLON

FILED: May 18, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-S49035-190%20-%20104779435135563166.pdf?cb=1>

“Appellant Victor Rojas-Rolon appeals from the judgment of sentence entered in the Court of Common Pleas of Montgomery County following his conviction by a jury on the charges of delivery or possession with the intent to deliver

a controlled substance (PWID), possession of a controlled substance, and possession of drug paraphernalia.¹ After a careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. ARTHUR LEE BELLAMY

FILED: May 14, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-So8013-210%20-%20104776421135333801.pdf?cb=1>

“Appellant Arthur Lee Bellamy appeals the March 27, 2018 judgment of sentence entered in the Court of Common Pleas of Lackawanna County (“trial court”), following the nunc pro tunc reinstatement of his direct appeal rights. Upon review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. TORIANO CHAZ GOLDMAN

FILED: May 14, 2021

<https://www.pacourts.us/storage/opinions/Superior/out/J-Ao8024-210%20-%20104776586135346584.pdf?cb=1>

“Toriano Chaz Goldman (Appellant) appeals from the judgment of sentence imposed following his summary conviction of disorderly conduct. See 18 Pa.C.S.A. § 5503(a)(1). We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER BANKS

FILED: May 13, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-Ao7008-210%20-%20104775320135255622.pdf?cb=1>

“Christopher Banks appeals from the judgment of sentence of an aggregate term of six to twelve years of imprisonment imposed after he was convicted of driving under the influence (“DUI”), fleeing or attempting to elude a police officer, firearms not to be carried without a license, and three counts of recklessly endangering another person (“REAP”), as well as several summary offenses, following a bifurcated trial. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. AMY MCFALLS

FILED: May 10, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-Ao8033-210%20-%20104771061134885399.pdf?cb=1>

“Appellant, Amy McFalls, appeals from the judgment of sentence entered in the Court of Common Pleas of Montgomery County following her conviction at a bench trial on the charge of driving while under the influence of alcohol (“DUI”),¹ as well as her conviction by a jury on the charges of aggravated harassment by a prisoner and institutional vandalism.² After a careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. TOBY MALLOY

FILED: May 7, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-Ao1030-210%20-%20104769767134762600.pdf?cb=1>

“Appellant, Toby Malloy, appeals from the judgment of sentence entered on February 24, 2020 in the Criminal Division of the Court of Common Pleas of Philadelphia County. We vacate and remand.”

COMMONWEALTH OF PENNSYLVANIA v. MICHAEL WHITE

FILED: May 5, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-So5030-210%20-%20104767281134500320.pdf?cb=1>

“Michael White appeals from the judgment of sentence, entered in the Court of Common Pleas of Philadelphia County, after he was convicted by a jury of tampering with evidence.¹ On appeal, he contends that the court costs and supervision fees he was ordered to pay should have been reduced or waived based on his financial means and ability to pay. After careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. MARK ANDREW DELMONICO

FILED: May 4, 2021

<http://www.pacourts.us/assets/opinions/Superior/out/J-Ao7044-210%20-%20104765973134414291.pdf?cb=1>

“Appellant, Mark Andrew Delmonico, appeals from the judgment of sentence entered in the Court of Common Pleas of Berks County following his conviction by a jury on the charges of delivery of a controlled substance, possession with the intent to deliver a controlled substance, possession of a controlled substance, possession of drug paraphernalia, and criminal conspiracy. Appellant contends the jury’s verdict is against the weight of the evidence, and the trial court erred in requiring the prospective jurors to wear masks and socially distance during voir dire.

After a careful review, we find no merit to Appellant’s weight of the evidence claim. Further, we find the masking and social distancing of the prospective jurors did not interfere with the sole purpose of voir dire: the “empanelling of a competent, fair, impartial, and unprejudiced jury capable of following the instructions of the trial court.” *Commonwealth v. Knight*, ___ Pa. ___, 241 A.3d 620, 640 (2020) (quotation omitted). Accordingly, we affirm.”

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