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Criminal Justice Update - August 2021

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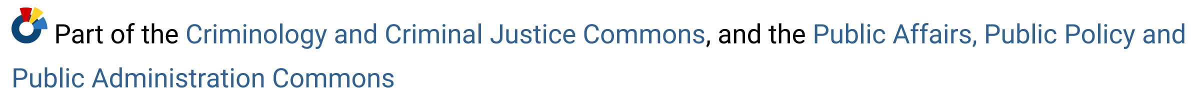
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Criminal Justice Update - August 2021

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 (no updates this month)
- Updates from the Courts
    - U.S. Supreme Court: Criminal Law & Procedure (no updates this month)
    - 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

Comments

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Criminal Justice Update

A monthly newsletter produced by the ACBA Fellow at Gettysburg College

August 2021

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

Comments or questions? Contact Patrick Mahoney at mahopa01@gettysburg.edu.

Updates from PA Governor's Office

**No new updates this month*

Updates from the PA Legislature

**No new updates this month*

Updates from the Courts

U.S. Supreme Court

**No new updates this month*

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. DUWAYNE A. DIXON, JR.

DECIDED: August 6, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-45-2021mo%20-%2010485824214245 1438.pdf?cb=3

"In this matter the trial court instructed the jury, prior to deliberations, that one of the prerequisites necessary to establish the crime of witness intimidation as a firstdegree felony had been fulfilled. We allowed appeal to consider whether that instruction violated the defendant's right to a jury trial under the Sixth Amendment to the United States Constitution as interpreted in Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). While the victim, Andre Ripley, was at a public park in Wilkinsburg, Allegheny County, Joshua Evans attempted to rob him at gunpoint. Ripley fled, at which point Evans opened fire. Three rounds struck Ripley, and another struck a three-month-old infant. Both victims survived and Ripley eventually identified Evans, who was the leader of a gang called the J-Town Soldiers, as the shooter. Evans was arrested and charged with a variety of offenses. Ripley was set to be the Commonwealth's lead witness at Evans' trial. Two weeks before the trial was scheduled to begin, Ripley was outside his home when he was shot a second time. Although he was shot in the head, he again survived. After an investigation, the police concluded that Appellant – who also belonged to the JTown Soldiers – was the shooter, and that he shot Ripley at Evans' behest to prevent Ripley from testifying at Evans' upcoming trial. Appellant was arrested and charged with, inter alia, aggravated assault, attempted homicide, criminal conspiracy, and witness intimidation. The latter charge is the one at issue in this appeal."

COMMONWEALTH OF PENNSYLVANIA v. MARK EDWARDS

DECIDED: August 17, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-11-2021mo%20-%20104866433143170704.pdf?cb=1

"In this case, we construe our merger statute, 42 Pa.C.S. § 9765,1 and consider for sentencing purposes whether Appellant's conviction for Recklessly Endangering Another Person (REAP), 18 Pa.C.S. § 2705,2 merges into his conviction for Aggravated Assault pursuant to 18 Pa.C.S. § 2702(a)(1). 3 More precisely, we consider whether the Superior Court correctly evaluated the statutory elements of each crime for which Appellant was convicted, rather than the particular proven facts, in determining merger was not appropriate. For the reasons that follow, we affirm the Superior Court's decision regarding the discrete issue before us."

COMMONWEALTH OF PENNSYLVANIA v. GREGORY JORDAN

DECIDED: August 17, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-37-2021mo%20-%20104866296143157819.pdf?cb=1

"We consider whether inconsistent verdicts rendered by separate factfinders in a simultaneous jury and bench trial implicate double jeopardy and collateral estoppel concerns, such that a defendant, who was acquitted by the jury on the charges it considered, may not also be found guilty by the trial court of other charges. We conclude that a defendant who elects to proceed with a simultaneous jury and bench trial during a single prosecution is subjected to only one trial and therefore double jeopardy and collateral estoppel do not apply to preclude the guilty verdict rendered by the judge."

COMMONWEALTH OF PENNSYLVANIA v. JORDAN ADONIS RAWLS

DECIDED: August 17, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-15-2021mo%20-%20104866297143158064.pdf.pdf?cb=2

"This appeal concerns whether law enforcement agents violated the Sixth Amendment to the United States Constitution when, although issuing Miranda warnings to an arrestee during an interrogation, they failed to specifically apprise him that criminal charges already had been filed against him. In October 2016, Appellant and Joseph Coleman perpetrated a home-invasion robbery in Williamsport, during which Kristine Kibler and her son, Shane Wright, were shot and killed. An accomplice, Casey Wilson, served in the role of a getaway driver. Police investigated and garnered evidence giving rise to probable cause to believe that Appellant participated in the crimes, and a complaint charging him with two counts of criminal homicide and related offenses was filed. Shortly thereafter -- after learning that his picture was circulating in the media in association with the killings -- Appellant [J-15-2021] - 2 voluntarily presented himself at a police station to address what he initially depicted to the agents as the "crazy nonsense" he had heard. Transcript of Audio/Video Recording dated Nov. 11, 2016, in Commonwealth v. Rawls, No. CR-89-2017 (C.P. Lycoming) [hereinafter, "A/V Recording"], at 11.

Appellant was immediately placed under arrest. While shackled, Appellant was interrogated by agents for a period of five-and-one half hours. At the outset, the lead investigator related to Appellant his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966). Among other things, he was told of his entitlement to be represented by an attorney during questioning and warned that anything that he said could and would be used against him in a court of law. See A/V Recording at 5. Appellant orally waived his rights and signed a written waiver form. He was also specifically admonished that: he was under arrest; he wasn't free to leave; the agents were investigating the criminal homicides that had appeared in the news; and they had probable cause to obtain a warrant for his arrest. See id. at 7. The agents, however, did not specifically advise Appellant that charges already had been lodged against him. During the interrogation, Appellant initially denied knowing Coleman or Wilson and pervasively lied about his whereabouts before, at, and after the time of the home invasion. The agents repeatedly confronted him with contrary evidence, including video surveillance footage showing the three co-perpetrators together

in various locations, as well as phone records documenting extensive contacts, in relevant time frames. Ultimately, Appellant admitted that he was present at the crime scene when the robbery and homicides were committed, but he professed to having been unarmed, claiming to have served “basically like . . . the lookout.” Id. at 236.1.

Appellant filed a pretrial motion seeking to suppress evidence of the interview. In one line of argumentation, he contended that, in the totality of the circumstances, his incriminatory statements were the product of inappropriate police tactics entailing deception, manipulation, and psychological coercion, thus invalidating his Miranda waiver per the Fifth Amendment. See Brief in Support of Omnibus Motion dated June 1, 2018, in Commonwealth v. Rawls, No. CR-89-2017 (C.P. Lycoming), at 8-9, 14-23. See generally Dickerson v. U.S., 530 U.S. 428, 433-34, 120 S. Ct. 2326, 2330-31 (2000) (discussing the due-process-related background pertaining to the voluntariness of confessions, and the incorporation of the Fifth Amendment’s self-incrimination clause). In the second line of his presentation, which gives rise to the legal question now before this Court, Appellant asserted that the agents violated his Sixth Amendment rights when they failed to inform him that criminal charges already had been filed against him. It was his position that, without such information, the waiver of his rights could not be deemed to have been knowing and intelligent. See generally Montejo v. Louisiana, 556 U.S. 778, 786, 129 S. Ct. 2079, 2085 (2009) (discussing the knowing-voluntary-and intelligent litmus associated with a waiver of the Sixth Amendment right to counsel).

For purposes of the Sixth Amendment, we apply the judgment of the Supreme Court of the United States that, “[s]o long as the accused is made aware of the ‘dangers and disadvantages of self-representation’ during post-indictment questioning, by use of the Miranda warnings, his waiver of his Sixth Amendment right to counsel at such questioning is ‘knowing and intelligent.’” Patterson, 487 U.S. at 300, 108 S. Ct. at 2399. While there are exceptional circumstances in which a Miranda waiver will not be effective for Sixth Amendment purposes, see id. at 296 n.8, 108 S. Ct. at 2397 n.8, we hold that there is no per se rule, arising under this amendment, invalidating such a waiver merely because an arrestee was not advised that charges had been filed. The order of the Superior Court is affirmed.”

COMMONWEALTH OF PENNSYLVANIA v. JAMES HENRY COBBS

DECIDED: August 17, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-16-2021mo%20-%2010486652914317603 5.pdf?cb=1

“The offense of assault by a life prisoner is defined, in relevant part, as aggravated assault with a deadly weapon or instrument by an individual “who has been sentenced to death or life imprisonment” and “whose sentence has not been commuted;” the penalty for that offense is life imprisonment. 18 Pa.C.S. § 2704. The issue presented in this appeal, which arises under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546 (“PCRA”), is whether Appellant James Henry Cobbs’ conviction of assault by a life prisoner is vitiated where a court subsequently vacated his predicate sentence of life imprisonment on grounds that it violated the Eighth Amendment to the United States Constitution, and resentenced him on the underlying offense to a term of 40 years to lifetime incarceration. We hold that under the circumstances

presented, Appellant's life sentence imposed for his conviction of assault by a life prisoner cannot stand. Accordingly, we vacate the Superior Court's judgment, which affirmed the PCRA court's order dismissing Appellant's PCRA petition. We further reverse the PCRA court's order and vacate Appellant's judgment of sentence and his related conviction under Section 2704."

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. JOHN DAVID ZACK, SR.

FILED: August 17, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-S19038-21o%20-%2010486726514324 7097.pdf?cb=1

"John David Zack, Sr. (Zack) appeals from the orders of the Court of Common Pleas of Fayette County (PCRA court) denying his timely first petitions for relief under the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. Zack was convicted in two separate cases for failing to comply with sex offender registration requirements under both the current version of the offense (18 Pa.C.S. § 4915.1) and the former version under Megan's Law III (18 Pa.C.S. § 4915). After review, we reverse Zack's convictions and judgments of sentence under the now repealed Section 4915 but affirm the denial of relief for his conviction under Section 4915.1."

COMMONWEALTH OF PENNSYLVANIA v. ERIC ROGERS

FILED: August 19, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-S19028-19o%20-%2010486996614 4243321.pdf?cb=1

"The Supreme Court of Pennsylvania remanded this appeal to us for the limited purpose of resolving the merits of one issue: whether the trial court abused its discretion when it decided that its non-jury verdicts of guilty against Eric Rogers were not against the weight of the evidence, so as to shock the trial court's conscience. See Commonwealth v. Rogers, ___ A.3d ___, No. 8 EAP 2020, 2021 WL 1975272 (Pa. 2021) ("Rogers II"). We initially affirmed the trial court's judgment of sentence, imposing an aggregate term of 55 to 170 years' incarceration on 46 crimes.1 See Commonwealth v. Rogers, No. 342 EDA 2017, 2019 WL 4686960 (unpublished) (Pa. Super. 2019) ("Rogers I"), affirmed in part, vacated in part, Rogers II, supra. After further review, we find no abuse of discretion, because Rogers failed to address his appellate argument to that deferential standard of review for his weight-of-the-evidence claim. Accordingly, we reaffirm the judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. ANDREW DULA III

FILED: August 20, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-A16019-21o%20-%2010487146014437631 7.pdf?cb=1

“Andrew Dula, III (Appellant), appeals from the judgment of sentence entered June 14, 2019, in the Luzerne County Court of Common Pleas, following his jury convictions of attempted involuntary deviate sexual intercourse (IDSI), institutional sexual assault,1 and related crimes for his sexual abuse of a mentally and physically disabled woman in his care. Appellant argues the trial court erred in failing to strike a juror for cause, and abused its discretion by permitting testimony concerning primitive sounds and non-verbal conduct by the victim, a bruise on the victim, and Appellant’s odd work behavior; denying a motion for a mistrial after the arresting officer stated he did not believe Appellant’s denial of culpability; refusing to instruct the jury that the victim would not be called to testify because she lacked testimonial competency; and admitting Appellant’s inculpatory statement in violation of the corpus delicti rule. For the reasons below, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. SHAWN CARR

FILED: August 30, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-A02007-21o%20-%20104879474145123663.pdf?cb=1

“Shawn Carr appeals from his July 23, 2019 judgment of sentence of two years of probation, which was imposed after he pleaded guilty to indecent assault. After careful review, we vacate Appellant’s judgment of sentence and remand with instructions.”

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