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Criminal Justice Update - October 2021

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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.

Contents:

Keywords

Criminal Justice Update, Adams County Bar Foundation, ACBF

Disciplines

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

CRIMINAL JUSTICE UPDATE

A monthly newsletter produced by the ACBA Fellow at Gettysburg College

October 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

Criminal Law & Procedure

House Bill 488 – Protecting Missing Children Cases from Negligent Parents/Guardians

Final Passage in the House, October 5, 2021

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2021&sind=0&body=H&type=B&bn=488

House Bill 488 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes that "require a report to be made about a missing child within 24 hours after his or her whereabouts became unknown, but will also require proof that parent's silence exhibited a reckless disregard for a risk of harm to a child, or for the child's health, safety, or welfare under the circumstances."

House Bill 1736 --- Protecting Arrested Individuals from Having Their Mugshot Photos Commercially Published and/or Disseminated

Final Passage in the House, October 27, 2021

https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2021&sind=0&body=H&type=B&bn=1736

House Bill 1736 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to create a new offense that "would be triggered any time a person who is engaged in publishing or disseminating a booking photograph solicits or accepts a fee or other consideration to remove or modify the photograph. A person convicted under this section commits a misdemeanor of the second degree,

punishable by up to 2 years imprisonment and/or a fine of up to $5,000. Any additional fee or consideration they receive or solicit is deemed to constitute a separate violation."

Updates from the Courts

U.S. Supreme Court

Criminal Law & Procedure

RIVAS-VILLEGAS v. CORTESLUNA

DECIDED: October 18, 2021

https://www.supremecourt.gov/opinions/21pdf/20-1539_09m1.pdf

"Petitioner Daniel Rivas-Villegas, a police officer in Union City, California, responded to a 911 call reporting that a woman and her two children were barricaded in a room for fear that respondent Ramon Cortesluna, the woman's boyfriend, was going to hurt them. After confirming that the family had no way of escaping the house, Rivas-Villegas and the other officers present commanded Cortesluna outside and onto the ground. Officers saw a knife in Cortesluna's left pocket. While Rivas-Villegas and another officer were in the process of removing the knife and handcuffing Cortesluna, Rivas-Villegas briefly placed his knee on the left side of Cortesluna's back. Cortesluna later sued under Rev. Stat. §1979, 42 U. S. C. §1983, alleging, as relevant, that Rivas-Villegas used excessive force. At issue here is whether Rivas-Villegas is entitled to qualified immunity because he did not violate clearly established law."

Reversed: The Court of Appeals held that "Rivas-Villegas is not entitled to qualified immunity because existing precedent put him on notice that his conduct constituted excessive force." Id., at 654. In reaching this conclusion, the Court of Appeals relied solely on LaLonde v. County of Riverside, 204 F. 3d 947 (CA9 2000). The court acknowledged that "the officers here responded to a more volatile situation than did the officers in LaLonde." 979 F. 3d, at 654. Nevertheless, it reasoned: "Both LaLonde and this case involve suspects who were lying face-down on the ground and were not resisting either physically or verbally, on whose back the defendant officer leaned with a knee, causing allegedly significant injury." Ibid. Judge Collins dissented. As relevant, he argued that "the facts of LaLonde are materially distinguishable from this case and are therefore insufficient to have made clear to every reasonable officer that the force Rivas-Villegas used here was excessive." Id., at 664 (internal quotation marks omitted). We agree and therefore reverse. Even assuming that controlling Circuit precedent clearly establishes law for purposes of §1983, LaLonde did not give fair notice to Rivas-Villegas. He is thus entitled to qualified immunity."

CITY OF TAHLEQUAH v. BOND

DECIDED: October 18, 2021

https://www.supremecourt.gov/opinions/21pdf/20-1668_new_n7io.pdf

"On August 12, 2016, Dominic Rollice's ex-wife, Joy, called 911. Rollice was in her garage, she explained, and he was intoxicated and would not leave. Joy requested police assistance; otherwise, "it's going to get ugly real quick." 981 F. 3d 808, 812 (CA10 2020). The dispatcher asked whether Rollice lived at the residence. Joy said he did not but explained that he kept tools in her garage. Officers Josh Girdner, Chase Reed, and Brandon Vick responded to the call. All three knew that Rollice was Joy's ex-husband, was intoxicated, and would not leave her home. Joy met the officers out front and led them to the side entrance of the garage. There the officers encountered Rollice and began speaking with him in the doorway. Rollice expressed concern that the officers intended to take him to jail; Officer Girdner told him that they were simply trying to get him a ride. Rollice began fidgeting with something in his hands and the officers noticed that he appeared nervous. Officer Girdner asked if he could pat Rollice down for weapons. Rollice refused. Police body-camera video captured what happened next. As the conversation continued, Officer Girdner gestured with his hands and took one step toward the doorway, causing Rollice to take one step back. Rollice, still conversing with the officers, turned around and walked toward the back of the garage where his tools were hanging over a workbench. Officer Girdner followed, the others close behind. No officer was within six feet of Rollice. The video is silent, but the officers stated that they ordered Rollice to stop. Rollice kept walking. He then grabbed a hammer from the back wall over the workbench and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point the video is no longer silent, and the officers can be heard yelling at Rollice to drop the hammer. He did not. Instead, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. He then raised the hammer higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers. In response, Officers Girdner and Vick fired their weapons, killing Rollice.

Rollice's estate filed suit against, among others, Officers Girdner and Vick, alleging that the officers were liable under 42 U. S. C. §1983, for violating Rollice's Fourth Amendment right to be free from excessive force. The officers moved for summary judgment, both on the merits and on qualified immunity grounds. The District Court granted their motion. Burke v. Tahlequah, 2019 WL 4674316, *6 (ED Okla., Sept. 25, 2019). The officers' use of force was reasonable, it concluded, and even if not, qualified immunity prevented the case from going further. Ibid. A panel of the Court of Appeals for the Tenth Circuit reversed. 981 F. 3d, at 826. The Court began by explaining that Tenth Circuit precedent allows an officer to be held liable for a shooting that is itself objectively reasonable if the officer's reckless or deliberate conduct created a situation requiring deadly force. Id., at 816. Applying that rule, the Court concluded that a jury could find that Officer Girdner's initial step toward Rollice and the officers' subsequent "cornering" of him in the back of the garage recklessly created the situation that led to the fatal shooting, such that their ultimate use of deadly force was unconstitutional. Id., at 823. As to qualified immunity, the Court concluded that several cases, most notably Allen v. Muskogee, 119 F. 3d 837 (CA10 1997), clearly established that the officers' conduct was unlawful. 981 F. 3d, at 826. This petition followed."

Reversed: “We need not, and do not, decide whether the officers violated the Fourth Amendment in the first place, or whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. On this record, the officers plainly did not violate any clearly established law. The doctrine of qualified immunity shields officers from civil liability so long as their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Pearson v. Callahan, 555 U. S. 223, 231 (2009). As we have explained, qualified immunity protects “‘all but the plainly incompetent or those who knowingly violate the law.’” District of Columbia v. Wesby, 583 U. S. ___, ___ –___ (2018) (slip op., at 13–14) (quoting Malley v. Briggs, 475 U. S. 335, 341 (1986)). Neither the panel majority nor the respondent has identified a single precedent finding a Fourth Amendment violation under similar circumstances. The officers were thus entitled to qualified immunity. The petition for certiorari and the motions for leave to file briefs amici curiae are granted, and the judgment of the Court of Appeals is reversed.”

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. AARON BRADLEY

DECIDED: October 20, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-44-2021mo%20-%20104928486149472312.pdf?cb=1

“In this appeal by allowance, we consider the procedure for enforcing the right to effective counsel in a Post Conviction Relief Act1 (“PCRA”) proceeding. All parties before us acknowledge that the current approach is inadequate, and that revisions are in order, but have offered differing viewpoints. For the reasons that follow, we determine that, indeed, an overhaul of the procedure to vindicate a petitioner’s right to effective PCRA counsel is appropriate, and we adopt the approach described within.”

IN THE INTEREST OF; T.W., A MINOR

DECIDED: October 20, 2021

https://www.pacourts.us/assets/opinions/Supreme/out/J-6-2021mo%20-%20104928255149467701.pdf?cb=1

“In this appeal by allowance, Appellant, T.W., a minor, appeals from the February 4, 2020 order of the Superior Court of Pennsylvania, which affirmed the July 10, 2018 order of the Court of Common Pleas of Philadelphia County denying a motion made by Appellant to suppress physical evidence and adjudicating Appellant delinquent for unlawful possession of a controlled substance. As will be discussed more fully below, Appellant’s arrest for unlawful possession of a controlled substance arose from a vehicle stop and a subsequent Terry frisk. Upon frisking Appellant, a police officer of the Philadelphia Police Department felt a hard object in Appellant’s left pants pocket. Fearing that the unknown object could be a weapon, the officer reached into Appellant’s pocket and removed the object. Appellant was arrested for possessing the object and a subsequent search incident to arrest led to the discovery of a controlled substance on Appellant’s person. Before trial, Appellant made a motion to suppress the physical evidence recovered from his person, arguing that the police officer exceeded the scope of a

permissible Terry frisk by reaching into Appellant's pocket and removing an object during the frisk. We granted review in this matter to address the standards by which a police officer may remove an object from within a suspect's clothing during a Terry frisk.

In the present case, for the foregoing reasons, we conclude Officer Grant had a reasonable suspicion that the object in Appellant's left pants pocket was a weapon. Therefore, Officer Grant did not exceed the scope of a permissible Terry frisk by reaching into and removing an object from Appellant's pocket. Accordingly, we affirm the February 4, 2020 order of the Superior Court."

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. ALFONSO SANCHEZ

FILED: October 4, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-A17018-21o%20-%20104912696148115134.pdf?cb=1

"Appellant, Alfonso Sanchez, appeals from the order entered in the Bucks County Court of Common Pleas, which denied his second motion to dismiss the charges against him based on double jeopardy grounds. We affirm."

COMMONWEALTH OF PENNSYLVANIA v. MAURICE GREEN

FILED: October 7, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-S09030-21o%20-%20104917295148520484.pdf?cb=1

"Maurice Green ("Green") appeals from the judgment of sentence imposed following his convictions of one count each of first-degree murder, carrying a firearm without a license, carrying a firearm on public street in Philadelphia, possessing instruments of crime, and recklessly endangering another person.1 We reverse and remand for a new trial."

COMMONWEALTH OF PENNSYLAVNIA v. TOD A. GALLAGHER

FILED: October 12, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-E02005-21o%20-%20104920430148806833.pdf?cb=1

"The Commonwealth appeals from the Butler County Court of Common Pleas' order of suppression. This matter, which is before the Court en banc after this Court granted reargument, raises an important question as to what police must do to obtain a knowing and voluntary consent to search by permission all or part of a cellular phone's data. The Commonwealth argues that it established that Appellee Tod A. Gallagher (Gallagher) gave such consent and the trial court erred in finding otherwise. Because the Commonwealth has not established meaningful consent to the invasive search it performed, we affirm."

COMMONWEALTH OF PENNSYLVANIA v ERNEST GOODS

FILED: October 13, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-A15007-21o%20-%20104922085148950536.pdf?cb=1

"Ernest Goods appeals from the order that denied his motion to dismiss based upon double jeopardy.1 We reverse the order and remand with directions that Appellant be discharged."

COMMONWEALTH OF PENNSYLVANIA v. TERRY BOWENS

FILED: October 19, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-E03006-20o%20-%20104928109149444071.pdf?cb=1

"Terry Bowens appeals from the judgment of sentence imposed after he was convicted of multiple drug and firearms offenses. We granted en banc review to address whether the collection of data from a cell phone that was in police custody, undertaken more than two days after the issuance of the warrant that authorized its search, required suppression of the information obtained. Upon review of that issue and others raised by Appellant, we discern no cause to disturb the trial court's suppression ruling and affirm Appellant's judgment of sentence."

COMMONWEALTH OF PENNSYLVANIA v. JOSE JAVIER DEJESUS

FILED: October 20, 2021

https://www.pacourts.us/assets/opinions/Superior/out/J-E01006-21o%20-%20104929304149525413.pdf?cb=1

"Appellant, Jose Javier DeJesus, appeals from the Judgment of Sentence entered on January 5, 2018, resentencing him to life without the possibility of parole ("LWOP") for a Second-Degree Murder he committed as a juvenile. Relying on Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 577 U.S. 190 (2016), he challenges the constitutionality of his LWOP sentence and the discretionary aspects of his sentence. In light of the U.S. Supreme Court's recent decision in Jones v. Mississippi, 141 S.Ct. 1307 (2021), we conclude that Appellant's LWOP sentence is constitutional. Further, because Appellant did not invoke our jurisdiction to review the discretionary aspects of his sentence, he has waived his challenge to the sentencing court's consideration of mitigating factors. We, thus, affirm."

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