




5-2022

## Criminal Justice Update - May 2022

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### Recommended Citation

Chassie, Autumn R., "Criminal Justice Update - May 2022" (2022). *Criminal Justice Updates*. 21.  
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## Criminal Justice Update - May 2022

### 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
- Updates from the PA Legislature (No new updates this month)
- Updates from the Courts
  - U.S. Supreme Court
  - PA Supreme Court
  - PA Superior Court

### Keywords

Criminal Justice Update, Adams County Bar Foundation, ACBF

### Disciplines

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



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# CRIMINAL JUSTICE UPDATE



*A monthly newsletter produced by the ACBF Fellow at Gettysburg College*

**May 2022**

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

*Comments or questions?  
Contact Autumn Chassie at  
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## Updates from PA Governor's Office

**Gov. Wolf Announces New Violence Intervention and Prevention Technical Assistance Project to Support Grassroots Programs**  
May 2, 2022

<https://www.governor.pa.gov/newsroom/gov-wolf-announces-new-violence-intervention-and-prevention-technical-assistance-project-to-support-grassroots-programs/>

“In January 2022, PCCD announced the availability of up to \$750,000 in state funds to support the Violence Intervention and Prevention (VIP) Technical Assistance Project. The competitive funding announcement sought proposals from eligible applicants with experience in delivering technical assistance and training, with an emphasis on supporting grassroots community organizations implementing community violence intervention strategies.”

## Updates from the PA Legislature

\*No new updates this month

## Updates from the Courts

### U.S. Supreme Court

## SHINN v. MARTINEZ

DECIDED: May 23, 2022

[https://www.supremecourt.gov/opinions/21pdf/20-1009\\_19m2.pdf](https://www.supremecourt.gov/opinions/21pdf/20-1009_19m2.pdf)

“Because we have no warrant to impose any factfinding beyond §2254(e)(2)’s narrow exceptions to AEDPA’s “general bar on evidentiary hearings,” McQuiggin, 569 U. S., at 395, we reverse the judgments of the Court of Appeals.”

### PA Supreme Court

## A.L. V. PENNSYLVANIA STATE POLICE

DECIDED: May 17, 2022

<https://www.pacourts.us/assets/opinions/Supreme/out/J-14-2022mo%20-%20105144922185761675.pdf?cb=1>

“In sum, the military statute under which Appellee was convicted effectively defines two crimes, one when the victim’s impairment is known to the actor, and the other when that impairment reasonably should be known but is not. PSP lacked a valid foundation to discern which of the two formed the basis for the military panel’s finding of guilt. For present purposes, then, that statute “criminalizes a broader swath of conduct,” Descamps, 570 U.S. at 258, than the predicate Pennsylvania offense defined by the Crimes Code, which, as noted, bases culpability on a mens rea of recklessness or above. As a consequence, the military offense is not “comparable” to 18 Pa.C.S. § 3124.1 for purposes of 42 Pa.C.S. § 9799.14(d)(13), and thus, Appellee’s court-martial conviction cannot be the basis for his classification as a Tier III lifetime registrant under SORNA.”

### PA Superior Court

*(Reporting only cases with precedential value)*

## Criminal Law & Procedure

## COMMONWEALTH OF PENNSYLVANIA v. JONATHAN ALAN CARL

FILED: May 4, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S13040-22o%20-%20105132909181898347.pdf?cb=1>

“Our relevant jurisprudence counsels against Rule 600 dismissals absent dilatory or bad faith prosecutorial efforts in bringing defendants to trial in a timely fashion. Here, we find the Commonwealth acted both reasonably and in good faith in relying upon Subsection (3) of the Declaration of Judicial Emergency to exclude from its internal Rule 600 timekeeping the 60 days from the time the criminal complaint was filed to the date of the Declaration’s expiration. The plainly-worded Subsection (3) unambiguously suspended in criminal cases all rule-based, “prompt trial” time computations for the duration of the Declaration’s effective period, and nothing in the subsequent paragraph of the Declaration placed qualifications or limitations on this absolute, temporary suspension. Accordingly, we vacate the order to dismiss and remand for further proceedings consistent with this decision.”

## COMMONWEALTH OF PENNSYLVANIA V. FRANKLIN ROOSEVELT DABNEY JR.

**FILED: May 5, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05017-22o%20-%20105134402182939781.pdf?cb=1>

“We find no merit to this issue. Our Supreme Court has held that because of the MMA, “the odor of marijuana alone does not amount to probable cause to conduct a warrantless search of a vehicle but, rather, may be considered as a factor in examining the totality of the circumstances.” Barr, 266 A.3d at 44. Assuming *arguendo* that Barr also applies to a determination of reasonable suspicion for an investigative detention, we find that Trooper Brandt could consider the odor as well as the other factors from the initial stop. “[I]nformation obtained by a police officer during a lawful initial traffic stop may be used to justify re-engagement with the driver after the police officer indicates the driver is free to go.” In the Interest of A.A., 195 A.3d 896, 898 (Pa. 2018), abrogated on “plain smell” grounds by Barr, 266 A.3d at 41. Here, the odor of raw marijuana is but one factor that Trooper Brandt could consider in addition to the factors supporting his initial traffic stop, which Dabney acknowledges was legal. Dabney’s Brief at 25. Therefore, Trooper Brandt had reasonable suspicion to detain Dabney to conduct field sobriety tests. Likewise, we discern no error of law in the suppression court’s resulting conclusion that Trooper Brandt had probable cause to arrest Dabney under suspicion of DUI following the failed field sobriety tests.”

#### **COMMONWEALTH OF PENNSYLVANIA v. RICHARD DEAN JURAY JR.**

**FILED: May 6, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S13037-22o%20-%20105135737184057502.pdf?cb=1>

“Appellant did not specify in his concise statement which of the four convictions he believes were against the weight of the evidence. Therefore, in light of the foregoing, we find this issue is waived. Accordingly, we affirm the judgment of sentence.”

#### **COMMONWEALTH OF PENNSYLVANIA v. SHAWN AARON HOBEL**

**FILED: May 10, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S07042-22o%20-%20105139041185213226.pdf?cb=1>

“After review, we find no abuse of discretion by the trial court in denying Hobel’s weight of the evidence challenge. As recounted in our discussion of the sufficiency of the evidence, the Commonwealth presented ample evidence that the three robberies were committed by the same perpetrator, including video surveillance showing that the robber wore the same clothing for each offense. The Commonwealth then presented ample evidence proving that Hobel was, in fact, the perpetrator even though none of the clerks could identify him in court because he wore a mask during the robberies. The Commonwealth accomplished through Heemer’s testimony about what Hobel admitted to her during his flight from the police, as well as the items recovered in his car after the chase, which included similar clothing to the robber, a black airsoft gun, masks and cigarettes of the same brand asked for during one of the robberies. Again, as we emphasized above, while none of these pieces of evidence in isolation would establish the case, the jury was free to consider them together in finding that Hobel committed the robberies. Accordingly, we hold that Hobel’s weight of the evidence challenge fails.”

#### **COMMONWEALTH OF PENNSYLVANIA v. PAUL MICHAEL LEHMAN**

**FILED: May 11, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A08013-22o%20-%20105140484185375710.pdf?cb=1>

“Although Appellant objected to the at-issue impeachment at trial, he never cited Rule 404(b) at that time, nor did he reference the rule’s ban on prior bad acts evidence during the sidebar discussion.<sup>13</sup> Consequently, it was not clear from the circumstances surrounding Appellant’s objection that it had been premised upon an ostensible violation of Rule 404(b). This was exacerbated when Appellant failed to reference Rule 404(b) in his Rule 1925(b) statement, explicitly or implicitly. Moreover, Appellant failed to rectify this ambiguity despite the court’s affording him the opportunity to supplement his deficient Rule 1925(b) statement. Appellant’s failures in this regard resulted in a trial court opinion that is completely unresponsive to the claim Appellant now seeks to raise for the first time in his appellate brief. Accordingly, due to Appellant’s failure to preserve this issue with adequate specificity at trial and in his Rule 1925(b) statement, it is waived.”

#### **COMMONWEALTH OF PENNSYLVANIA v. JOHNNY J. MILLER**

**FILED: May 11, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S05039-22o%20-%20105140716185396726.pdf?cb=1>

“Based on our review of the record and relevant case law, we conclude that the court did not abuse its discretion in rendering its sentence. As noted above, it was solely within the province of the sentencing court to weigh the evidence and balance the sentencing factors. Based on the court’s consideration of the PSI and the other evidence presented, we conclude that Appellant’s sentence of 55 years to life imprisonment is not manifestly unreasonable.”

#### **COMMONWEALTH OF PENNSYLVANIA v. HUGH J. LANG**

**FILED: May 16, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A20034-21o%20-%20105145003185767997.pdf?cb=1>

“Here, the Commonwealth contends the post-trial court violated the coordinate jurisdiction rule simply because it insists the post-trial court’s ruling was incorrect. Indeed, it argues the trial court determined that the internet search evidence was admissible, and thus, the post-trial court had “no basis . . . to come swooping in during post-sentence motions and overrule a judge of coordinate jurisdiction on a finally-decided legal question.” Commonwealth’s Brief at 48. As explained above, we agree with the post-trial court’s ruling that the trial court admitted the evidence in error. Accordingly, there is no violation of the coordinate jurisdiction rule.”

#### **COMMONWEALTH OF PENNSYLVANIA v. SHAWN C. CONKLIN**

**FILED: May 18, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S13041-22o%20-%20105148117185996699.pdf?cb=1>

“Appellant argues that the court failed to indicate how the nature of the attack against Mr. Christofferson substantially differed from the nature of the attacks against the other two victims in Counts (B) and (C). We disagree. The record as developed at the sentencing hearing confirmed that while multiple victims sustained serious injuries, Mr. Christofferson’s were particularly extreme, life threatening, and required prolonged and extensive medical intervention. The court’s stated reasons in support of the aggravated range sentence reflect these distinctions present in both the PSI report and the record at large, such that we find no merit to Appellant’s claim otherwise.”

## COMMONWEALTH OF PENNSYLVANIA v. FRANCIS FALLON

FILED: May 19, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07023-22o%20-%20105149517186110628.pdf?cb=1>

“This was not an abuse of discretion. The facts cited by Fallon were not so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice. That Fallon believes some evidence improperly was admitted is irrelevant to the weight claim, particularly where he did not challenge the evidentiary rulings on appeal.”

## COMMONWEALTH OF PENNSYLVANIA v. CLAIRE RISOLDI

FILED: May 24, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07001-22o%20-%20105154080186529050.pdf?cb=1>

“In the instant case, the trial court did not state on the record at sentencing if Appellant is eligible to participate in a reentry plan.<sup>5</sup> That aspect of Appellant’s sentence is, therefore, illegal and subject to correction. We remand solely for the sentencing court to determine Appellant’s eligibility to participate in a reentry plan pursuant to 42 Pa.C.S. § 9756(b)(3).<sup>6</sup> We affirm all other aspects of Appellant’s sentence.”

## COMMONWEALTH OF PENNSYLVANIA v. SYLVESTER ANDERSON

FILED: May 25, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-E03003-21o%20-%20105155511186679719.pdf?cb=1>

“In sum, we conclude the Commonwealth’s arguments are unavailing, the trial court’s factual findings are supported by the record, and we discern no error in its grant of Appellee’s motion to suppress.”

## COMMONWEALTH OF PENNSYLVANIA v. WILLIAM LANDIS JR.

FILED: May 26, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05036-22o%20-%20105157179186800151.pdf?cb=1>

“While the jury was free to weigh the testimony of the competing experts as well as the basis for their expert opinions, the trial court substituted its own credibility determination for that of the jury and simply overturned the jury’s verdict as it indicated that it would have arrived at a different conclusion.

Thus, we conclude that the trial court abused its discretion in granting Landis’s post-sentence motion based on his weight of the evidence claim.”

**Dissenting Opinion (Kunselman):** <https://www.pacourts.us/assets/opinions/Superior/out/J-A05036-22do%20-%20105157179186802065.pdf?cb=1>

## COMMONWEALTH OF PENNSYLVANIA v. THEODORE DIXON

FILED: May 26, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-S09008-22o%20-%20105157079186781451.pdf?cb=1>

“Here, the witnesses testified, under oath, within feet of Dixon and the jury. The jury was able to assess the witnesses’ credibility and demeanor by (1) observing their movements, body language, appearance, eyes, and posture; and (2) listening to the tone of their voices. Most importantly, the witnesses were subject to cross-examination by defense counsel. In light of the foregoing—and bearing in mind the necessity of protecting trial participants and members of the general public during an unprecedented public health emergency—we conclude that Dixon was not denied his Sixth Amendment right to a physical, face-to-face confrontation with the Commonwealth’s witnesses.”

## COMMONWEALTH OF PENNSYLVANIA v. BRIAN ANDREW WOLF

FILED: May 27, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05015-22o%20-%20105158831186938672.pdf?cb=1>

“Appellant’s claim fails. In *Torsilieri*, the defendant was also “not designated an SVP” and the Supreme Court still concluded that the defendant did not “demonstrate a consensus of scientific evidence as was present to find a presumption not universally true in *J.B.*, nor the ‘clearest proof’ needed to overturn the General Assembly’s statements that the provisions are not punitive.” Again, in the case at bar, Appellant invites us to go beyond *Torsilieri*’s holding and conclude that the registration statutes are, as a matter of law, unconstitutional on their face. We decline Appellant’s invitation. *Torsilieri* binds this Court and Appellant’s claim fails, as Appellant unsupported challenge does not “demonstrate a consensus of scientific evidence as was present to find a presumption not universally true in *J.B.*, nor the ‘clearest proof’ needed to overturn the General Assembly’s statements that the provisions are not punitive.”

## COMMONWEALTH OF PENNSYLVANIA v. PATRICIA FARKAS

FILED: May 27, 2022

<https://www.pacourts.us/assets/opinions/Superior/out/J-A04007-22o%20-%20105158737186929953.pdf?cb=1>

“In *Commonwealth v. Coleman*, 905 A.2d 1003 (Pa. Super. 2006), a defendant, convicted of Medicaid Fraud and related charges, claimed on appeal that the trial court had imposed an illegal sentence of restitution because neither the Department of Public Welfare nor the Attorney General were “victims” as defined in section 1106 of the Crimes Code. Our Court concluded that the defendant’s argument was “misplaced, as there exists independent statutory authority to require the payment of restitution to the Department of Public Welfare.” Just as in *Coleman*, Farkas’ argument is misplaced. As the trial court notes, the restitution Farkas was ordered to pay is “specifically authorized for any conviction arising from the Medicaid Fraud statute.” Trial Court Opinion, 4/20/21, at 3. We agree and, thus, find her argument meritless.”



**COMMONWEALTH OF PENNSYLVANIA v. COLIN LYNN WRIGHT**

**FILED: May 31, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05001-22o%20-%20105160419187128521.pdf?cb=1>

“Thus, since The Phia Group is not an “insurance company” and did not pay any claim in this case, The Phia Group was not entitled to restitution under the plain language of Section 1106. We must, therefore, vacate Appellant’s judgment of sentence and remand for resentencing.”

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