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## Criminal Justice Update - January 2023

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## Criminal Justice Update - January 2023

### 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 [add or remove subsections as appropriate]
  - U.S. Supreme Court: Criminal Law & Procedure (no updates this month)
  - PA Supreme Court: Criminal Law & Procedure (no updates this month)
  - 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



# CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at Gettysburg College

*January 2023*

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

*Comments or questions?  
Contact Patrick Mahoney at  
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## Updates from PA Governor's Office

*\*No new updates this month*

## Updates from the PA Legislature

### Criminal Law & Procedure

*\*No new updates this month*

## Updates from the Courts

### U.S. Supreme Court

*\*No new updates this month*

### PA Supreme Court

*\*No new updates this month*

### PA Superior Court

*(Reporting only cases with precedential value)*

### Criminal Law & Procedure

**COMMONWEALTH OF PENNSYLVANIA v. GARY L. BATHURST, JR.**

**FILED: January 6, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S41022-22o%20-%20105393033208372799.pdf?cb=1>

“Gary L. Bathurst (Appellant) appeals from the judgment of sentence entered after the trial court convicted him of driving under the influence of alcohol (DUI) (incapable of safe driving – first offense), DUI (blood alcohol concentration (BAC) between 0.08% and 0.10%) and DUI (high rate of alcohol – BAC between 0.10% and 0.16%). After careful review, we affirm.”

**COMMONWEALTH OF PENNSYLVANIA v. RASHEED MUHAMMAD**

**FILED: January 9, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A26031-22o%20-%20105394710208533645.pdf?cb=1>

“Rasheed Muhammad (Muhammad) appeals from the judgment of sentence imposed following his jury conviction in the Court of Common Pleas of Delaware County (trial court) of resisting arrest and firearms not to be carried without a license.<sup>1</sup> Muhammad challenges the trial court’s denial of his motion to suppress evidence and the sufficiency of the evidence supporting his conviction. We affirm.”

**COMMONWEALTH OF PENNSYLVANIA v. MOSHE JOURNO**

**FILED: January 11, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A22027-22o%20-%20105397653208806368.pdf?cb=1>

“Appellant Moshe Journo appeals from the judgment of sentence entered by the Court of Common Pleas of Allegheny County on July 12, 2021. Appellant seeks judgment of acquittal on several charges, claiming that the prosecution of these offenses violates the “Rule of Specialty” included in the Protocol between the Government of the United States and the Government of the State of Israel Amending the Convention on Extradition of 1962 (“Protocol”). After review, we conclude that the Commonwealth did not violate the Rule of Specialty and affirm the judgment of sentence.”

**MARY KATHLEEN SMITH v. THERESE T. O'BRIEN**

**FILED: January 19, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S33004-22o%20-%20105405515209528295.pdf?cb=1>

“Therese T. O’Brien, individually and as administratrix of her husband William O’Brien’s estate, appeals from the order directing her to divulge a conversation she and Mr. O’Brien had shortly before his death. The trial court rejected Mrs. O’Brien’s assertion of spousal-communication privilege.

While the spousal-communication privilege survives a marriage, the basis for entertaining an immediate appeal from an order compelling disclosure of spousal communications does not. Thus, we quash these consolidated appeals as interlocutory. According to Ms. Smith’s complaint, when she was between the ages of five and eleven, Mr. O’Brien sexually assaulted her on multiple occasions while she visited the O’Brien home. Mrs. O’Brien was present during those visits. Ms. Smith eventually told her parents, who called the police. They came to the home, questioned Mr. O’Brien about the sexual-assault allegations, but did not arrest him. Once law enforcement departed, Mr. O’Brien told his wife “why he was speaking to the police.” Trial Court Opinion, 4/14/22, at 2 (citing Depo. of Mrs. O’Brien at 11:15-17, 22-25). He then got in his car and drove off. A few hours later, Mr. O’Brien died in a train crash.

Upon becoming an adult, Ms. Smith sued Mrs. O’Brien and Mr. O’Brien’s estate for battery, negligence, and intentional infliction of emotional distress. In discovery, Mrs. O’Brien sat for a deposition. As mentioned, she objected to questions concerning her conversation with her husband based on spousal communication privilege. Ms. Smith moved to compel her testimony, and the trial court granted the motion. These appeals followed.

After reviewing the record, we questioned our appellate jurisdiction over the appealed-from order directing discovery. “Neither party has raised this issue; however, it is well-settled that this Court may raise the issue of our jurisdiction sua sponte.” *Funk v. Empfield*, 281 A.3d 315, 317 (Pa. Super. 2022). Therefore, we issued a rule to show cause regarding why we should not quash these appeals due to a lack of appellate jurisdiction. Specifically, we asked “whether the underlying goal of [spousal] privilege is promoted by allowing collateral appeals after a marriage has ended.

In sum, after a marriage ends, an order directing disclosure of a marital communication is not collateral. If privileged, marital communications are improperly disclosed in court, no harm or discord can befall a marriage that no longer exists. Because the O’Brien marriage has ended, the discovery order before us

does not satisfy the second and third prongs of the collateral order doctrine. See Pa.R.A.P. 313(b). As such, we lack appellate jurisdiction.”

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