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## Criminal Justice Update - February 2023

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## Criminal Justice Update - February 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 new updates this month
- Updates from the PA Legislature: no new updates this month
- Updates from the Courts
  - U.S. Supreme Court: Criminal Law & Procedure
  - 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



# CRIMINAL JUSTICE UPDATE

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A monthly newsletter produced by the ACBA Fellow at Gettysburg College

*February 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

#### **Cruz v. Arizona**

**DECIDED: February 22, 2023**

[https://www.supremecourt.gov/opinions/22pdf/21-846\\_lkgn.pdf](https://www.supremecourt.gov/opinions/22pdf/21-846_lkgn.pdf)

"Petitioner John Montenegro Cruz was found guilty of capital murder by an Arizona jury and sentenced to death. Both at trial and on direct appeal, Cruz argued that under *Simmons v. South Carolina*, 512 U. S. 154, he should have been allowed to inform the jury that a life sentence in Arizona would be without parole. The trial court and Arizona Supreme Court held that Arizona's capital sentencing scheme did not trigger application of *Simmons*. After Cruz's conviction became final, this Court held in *Lynch v. Arizona*,

578 U. S. 613 (per curiam), that it was fundamental error to conclude that Simmons “did not apply” in Arizona. Id., at 615. Cruz then sought to raise the Simmons issue again in a state postconviction petition under Arizona Rule of Criminal Procedure 32.1(g), which permits a defendant to bring a successive petition if “there has been a significant change in the law that, if applicable to the defendant’s case, would probably overturn the defendant’s judgment or sentence.” The Arizona Supreme Court denied relief after concluding that Lynch was not “a significant change in the law.”

Held: The Arizona Supreme Court’s holding that Lynch was not a significant change in the law is an exceptional case where a state-court judgment rests on such a novel and unforeseeable interpretation of a state court procedural rule that the decision is not adequate to foreclose review of the federal claim.

## PA Supreme Court

### **COMMONWEALTH OF PENNSYLVANIA v. JAMAL WALLACE**

**FILED: February 22, 2023**

<https://www.pacourts.us/assets/opinions/Supreme/out/J-51-2022mo%20-%20105441308213338599.pdf?cb=1>

“Pennsylvania Rule of Evidence 801 defines hearsay as an out-of-court statement made by a declarant, which is offered into evidence to prove the truth of the matter asserted. Pa.R.E. 801.1 This type of evidence is generally inadmissible at trial unless it falls into an exception to the hearsay rule. See generally Pa.R.E. 803 (setting forth hearsay exceptions). In this discretionary appeal, we consider whether Global Positioning System (“GPS”) data compiled from a GPS monitoring device on a parolee, is inadmissible hearsay. For the reasons that follow, we hold that the challenged evidence is not hearsay because it does not constitute a statement made by a declarant, as outlined in Rule 801, as it is not an assertion (or the nonverbal conduct) of a person. Accordingly, we affirm the Superior Court.”

### **UNITED STATES OF AMERICA v. MARC J. HARRIS**

**FILED: February 22, 2023**

<https://www.pacourts.us/assets/opinions/Supreme/out/J-43-2022mo%20-%20105441314213340294.pdf?cb=1>

“This Court granted the Petition for Certification of Question of Law filed by the United States Court of Appeals for the Third Circuit (“Third Circuit”) to address the single issue of whether Pennsylvania’s first-degree aggravated assault provision, codified at 18 Pa.C.S. § 2702(a)(1), requires some use of physical

force. For the reasons expressed herein, we answer this inquiry in the negative, and hold that the offense of aggravated assault under Section 2702(a)(1) does not require the actor to exercise physical force when inflicting or attempting to inflict serious bodily injury upon the victim.”

## **COMMONWEALTH OF PENNSYLVANIA v. HARVE LAMAR JOHNSON**

**FILED: February 22, 2023**

<https://www.pacourts.us/assets/opinions/Supreme/out/J-40-2022mo%20-%20105441166213334313.pdf?cb=1>

“In this capital case, Harve Lamar Johnson (appellant) appeals from the order of the York County Court of Common Pleas denying his first, timely petition for postconviction relief pursuant to the Post Conviction Relief Act (PCRA).<sup>1</sup> Appellant raises twenty-two claims. For the reasons set forth below, we affirm.”

### PA Superior Court

*(Reporting only cases with precedential value)*

### **Criminal Law & Procedure**

## **COMMONWEALTH OF PENNSYLVANIA v. JASON ANDREW LEAR**

**FILED: February 1, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S38045-22o%20-%20105420547211474385.pdf?cb=1>

“Jason Andrew Lear appeals the judgment of sentence following his nonjury trial and conviction for aggravated assault and theft offenses. He challenges the denial of his motion to suppress evidence and his motion to dismiss under Pennsylvania Rule of Criminal Procedure 600. We affirm the denial of suppression, but we remand for a hearing for the trial court to determine whether the Commonwealth exercised due diligence.”

## **COMMONWEALTH OF PENNSYLVANIA v. DAVID FRANK STAHL**

**FILED: February 7, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S36034-22o%20-%20105426542212010504.pdf?cb=1>

“Appellant, David Frank Stahl, appeals pro se from the order entered in the Westmoreland County Court of Common Pleas (trial court), which dismissed his second petition filed pursuant to the Post Conviction Relief Act (PCRA)<sup>1</sup> without a hearing. For the reasons set forth below, we affirm.”

#### **COMMONWEALTH OF PENNSYLVANIA v. DANIELLE SNYDER**

**FILED: February 7, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S35023-22o%20-%20105426725212028581.pdf?cb=1>

“Danielle Snyder appeals from the judgment of sentence entered following her open guilty plea to aggravated assault. She argues the court abused its discretion by imposing an excessive sentence. We affirm.”

#### **COMMONWEALTH OF PENNSYLVANIA v. MICHAEL MIDGLEY**

**FILED: February 7, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S28019-22o%20-%20105426729212029367.pdf?cb=1>

“Michael Midgley appeals the denial of his petition for relief under the Post-Conviction Relief Act (“PCRA”), 42 Pa.C.S.A. §§ 9541-9546. He claims that his petition raised meritorious claims. He also maintains that the court erred in denying his request to proceed pro se, appointing counsel, and not responding to his motion to dismiss the appointment. He further claims that PCRA counsel was ineffective. We affirm.”

#### **COMMONWEALTH OF PENNSYLVANIA v. MICHAEL THOMPSON**

**FILED: February 7, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A24006-22o%20-%20105426687212025527.pdf?cb=1>

“Appellant, Michael Thompson, appeals from the judgment of sentence of 66 to 132 months’ incarceration<sup>1</sup> entered following his stipulated non-jury trial conviction of one count of person not to possess a firearm. His appellate issues both relate to the trial court’s denial of his motion to suppress a firearm, which was recovered during an inventory search prior to towing Appellant’s vehicle. Appellant argues that our Supreme Court’s decision in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020) (holding that Article I, Section 8 does not recognize the full federal “automobile exception” to the

warrant requirement), eliminated the inventory search exception. We disagree and affirm the judgment of sentence.”

#### **COMMONWEALTH OF PENNSYLVANIA v. ALFRED C. CARRERA II**

**FILED: February 8, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S44031-22o%20-%20105428217212158642.pdf?cb=1>

“Alfred C. Carrera II (Carrera) appeals from the order of the Court of Common Pleas of Dauphin County (PCRA court) denying his first petition filed pursuant to the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. He argues that the court erred in denying his petition because his sentence was illegal where it was based on Pennsylvania’s Three Strikes Law. We affirm and grant counsel’s motion for leave to withdraw.”

#### **COMMONWEALTH OF PENNSYLVANIA v. KARISSA SMITH**

**FILED: February 15, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A29031-22o%20-%20105435550212840964.pdf?cb=1>

“Karissa Smith appeals from the judgment of sentence imposed after she failed to appear at a trial de novo on a charge of driving while operating privilege is suspended or revoked. 1 She argues that because the officer who observed the alleged offense also failed to appear, the trial court was required to dismiss the charge under Pennsylvania Rule of Criminal Procedure 462(C). We hold that Rule 462(C) is mandatory when applicable, and the defendant’s failure to appear does not negate it. Accordingly, we vacate Smith’s conviction and judgment of sentence, and we dismiss the charge against her.”

#### **COMMONWEALTH OF PENNSYLVANIA v. JOHN WILLIAM TROELL**

**FILED: February 15, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S39008-22o%20-%20105435380212826615.pdf?cb=1>

“John William Troell appeals from the judgment of sentence imposed following his conviction for aggravated indecent assault of a child. Troell now argues the trial court miscalculated the incorrect offense gravity score (“OGS”) and therefore incorrectly applied the Sentencing Guidelines. We find no error or abuse of discretion in the trial court’s OGS calculation and affirm the judgment of sentence.”

## COMMONWEALTH OF PENNSYLVANIA v. DALISHIA DANIKA SALTER

FILED: February 17, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S36037-22o%20-%20105438711213114555.pdf?cb=1>

“Dalishia Danika Salter appeals nunc pro tunc from the judgment of sentence imposed after a jury found her guilty of aggravated assault, endangering the welfare of a child, simple assault, recklessly endangering another person, and falsely reporting to law enforcement.<sup>1</sup> For these offenses, Salter was sentenced to a total of seven-and-one-half to fifteen years of incarceration, with Count I, the aggravated assault conviction, specifically receiving an aggravated sentence. On appeal, Salter solely contends that the lower court abused its discretion in determining that an aggravated sentence was necessary at Count I. In particular, Salter faults the lower court’s reliance on her apparent failure to display emotion and/or remorse at trial. We affirm.”

## COMMONWEALTH OF PENNSYLVANIA v. HOWARD OMAR POWELL

FILED: February 17, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S41031-22o%20-%20105438575213102830.pdf?cb=1>

“Appellant, Howard Omar Powell, appeals from the order entered in the Court of Common Pleas of Schuylkill County that dismissed as meritless his “Writ of Praeceptum for Petition for Writ of Habeas Corpus”, in which he asserted he has served more than 20 years’ incarceration on an illegal 20 to 40-year sentence imposed on his conviction of a Criminal Attempt Murder-Serious Bodily Injury charge that was neither included in the Criminal Information filed against him nor submitted to the jury. For reasons that follow, we affirm the order denying relief, albeit on different grounds than set forth below, as we treat Appellant’s petition as an untimely serial Post Conviction Relief Act (“PCRA”) petition.”

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