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Criminal Justice Update - April 2023

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Criminal Justice Update - April 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
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Keywords

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Disciplines

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



CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBF Fellow at Gettysburg College

April 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

REED V. GOERTZ

FILED: April 19, 2023

[21-442 Reed v. Goertz \(04/19/2023\) \(supremecourt.gov\)](https://supremecourt.gov)

"A Texas jury found petitioner Rodney Reed guilty of the 1996 murder of Stacey Stites. The Texas Court of Criminal Appeals affirmed Reed's conviction and death sentence. In 2014, Reed filed a motion in Texas state court under Texas's post-conviction DNA testing law. Reed requested DNA testing on certain evidence, including the belt used to strangle Stites, which Reed contended would help identify the true perpetrator. The state trial court denied Reed's motion, reasoning in part that items Reed sought to test

were not preserved through an adequate chain of custody. The Texas Court of Criminal Appeals affirmed, and later denied Reed's motion for rehearing. Reed then sued in federal court under 42 U. S. C. §1983, asserting that Texas's post-conviction DNA testing law failed to provide procedural due process. Reed argued that the law's stringent chain-of-custody requirement was unconstitutional. The District Court dismissed Reed's complaint. The Fifth Circuit affirmed on the ground that Reed's §1983 claim was filed too late, after the applicable 2-year statute of limitations had run. The Fifth Circuit held that the limitations period began to run when the Texas trial court denied Reed's motion, not when the Texas Court of Criminal Appeals denied rehearing.

Held: When a prisoner pursues state post-conviction DNA testing through the state-provided litigation process, the statute of limitations for a §1983 procedural due process claim begins to run when the state litigation ends, in this case when the Texas Court of Criminal Appeals denied Reed's motion for rehearing

- (a) Texas's three threshold arguments lack merit. First, Reed has standing because Reed sufficiently alleged an injury in fact: denial of access to the requested evidence by the state prosecutor (the named defendant). A federal court conclusion that Texas's post-conviction DNA testing procedures denied Reed due process would "amount to a significant increase in the likelihood" that Reed "would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U. S. 452, 464. Second, Texas's invocation of the State's sovereign immunity fails because the *Ex parte Young* doctrine allows suits like Reed's for declaratory or injunctive relief against state officers in their official capacities. 209 U. S. 123, 159–161. Third, Reed's procedural due process claim does not contravene the *Rooker-Feldman* doctrine.
- (b) The sole question before the Court is whether Reed's §1983 suit raising a procedural due process challenge to Texas's post-conviction DNA testing law was timely under the applicable 2-year statute of limitations. The statute of limitations begins to run when the plaintiff has a "complete and present cause of action," *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U. S. 192, 201, a determination the Court makes by focusing first on the specific constitutional right alleged to have been infringed. See *McDonough v. Smith*, 588 U. S. ___, ___. Here, that right is procedural due process. A procedural due process claim is complete not "when the deprivation occurs" but only when "the State fails to provide due process." *Zinermon v. Burch*, 494 U. S. 113, 126. Texas's process for considering a request for DNA testing in capital cases includes both trial court proceedings and appellate review, which under Texas Rule of Appellate Procedure 79.1 encompasses a motion for rehearing. In Reed's case, the State's alleged failure to provide Reed with a fundamentally fair process was complete when the state litigation ended—when the Texas Court of Criminal Appeals denied Reed's motion for rehearing. Therefore, the statute of limitations began to run on Reed's §1983 claim when Reed's motion for rehearing was denied."

PA Supreme Court

UNITED STATES OF AMERICA v. JOSEPH MELVIN ROLLINS

FILED: April 19, 2023

[J-2-2023mo - 105503189221662783.pdf \(pacourts.us\)](#)

“In *Commonwealth v. Eid*, 249 A.3d 1030 (Pa. 2021), this Court found Section 1543(b)(1.1)(i) of the Vehicle Code unconstitutionally vague in contravention of state and federal due process principles because it failed to specify a maximum term of imprisonment. We granted allowance of appeal in this case to determine whether another subsection of that same statute, Section 1543(b)(1)(iii), is unconstitutional for similarly failing to specify a maximum term of imprisonment. We decline to find this provision unconstitutional and therefore affirm the Superior Court’s order.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. HEATHER LOUISE HUMMEL

FILED: April 4, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S44013-22o%20-%20105488422218081015.pdf?cb=1>

“The Commonwealth of Pennsylvania appeals from the judgment of sentence imposed following the guilty plea entered by Heather Louise Hummel to driving under the influence of alcohol and controlled substances (“DUI”), in violation of 75 Pa.C.S.A. § 3802(d)(3), as a first-time DUI offender. On appeal, the Commonwealth argues it should have been permitted to establish Hummel’s prior acceptance of Accelerated Rehabilitative Disposition (“ARD”) as a prior offense. Applying this Court’s recent decisions in *Commonwealth v. Richards*, 284 A.3d 214 (Pa. Super. 2022) (en banc), appeal granted, 518 MAL 2022 (Pa. Mar. 15, 2023), and *Commonwealth v. Moroz*, 284 A.3d 227 (Pa. Super. 2022) (en banc), we vacate the judgment of sentence and remand for resentencing.”

COMMONWEALTH OF PENNSYLVANIA v. MELISSA LIN KEISTER

FILED: April 4, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S39044-22o%20-%20105488506218087804.pdf?cb=1>

“Appellant Melissa Lin Keister appeals from the judgment of sentence imposed after a jury convicted her of endangering the welfare of a child (EWOC). Appellant challenges the sufficiency of the evidence supporting her conviction. Following our review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. CHARLES MICHAEL BECHER

FILED: April 4, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-A06034-23o%20-%20105488485218086576.pdf?cb=1>

“The Commonwealth appeals from the order of the Court of Common Pleas of Allegheny County (trial court) granting a new trial to Charles Michael Becher (Becher) after a jury convicted him of third-degree murder.

By way of background, Becher shot and killed the victim but claimed self-defense at trial. Several witnesses testified that before the shooting, Becher’s cousins threatened the group that the victim was in, yelling that they planned to get Becher and that he was going to “smoke” them. Becher objected to the testimony on hearsay grounds, but the trial court overruled him. The trial court gave a precautionary instruction to the jury that it could not use the threats of his cousins as proof of Becher’s intent. After the verdict, Becher moved for a new trial but limited his claim to the weight of the evidence. At sentencing, however, the trial court announced that it was granting Becher a new trial because the testimony about the threats was “blatant, inadmissible hearsay” going to Becher’s intent. The court explained that it had authority to grant a new trial “in the interest of justice” under *Commonwealth v. Powell*, 590 A.2d 1240, 1243 (Pa. 1991) (“[I]f a trial court determines that the process has been unfair or prejudicial ... it may, in the exercise of its discretionary powers, grant a new trial ‘in the interest of justice.’”). Recently, though, in *Temple v. Providence Care Ctr., LLC*, 233 A.3d 750 (Pa. filed July 21, 2020), our Supreme Court limited a trial court’s authority to grant a new trial sua sponte when a party recognizes an error but fails to preserve it. In those cases, our Supreme Court held that a trial court may exercise its sua sponte authority only in “truly exceptional circumstances” involving “exceedingly clear error” that results in a “manifest injustice.” *Id.* at 766.

Applying that standard here, we find that the trial court abused its discretion in granting Becher a new trial “in the interest of justice” because it is not “exceedingly clear” that the testimony about the threats was “blatant, inadmissible hearsay” that prejudiced Becher. Accordingly, we reverse and remand with instructions.”

COMMONWEALTH OF PENNSYLVANIA v. LEALI PERKINS

FILED: April 5, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07003-23o%20-%20105490060218252114.pdf?cb=1>

“Appellant, Leali Perkins, appeals from the judgment of sentence entered on September 21, 2021, after the municipal court found him guilty of direct criminal contempt.¹ After careful review, we conclude that the court erred by finding Appellant to be in direct contempt. As a result, we vacate Appellant’s conviction and judgment of sentence.”

COMMONWEALTH OF PENNSYLVANIA v. MATTHEW SINKIEWICZ

FILED: April 5, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07033-23o%20-%20105490076218254299.pdf?cb=1>

“In these consolidated appeals,¹ the Commonwealth appeals from the orders entered in the Philadelphia County Court of Common Pleas denying its motions to refile aggravated assault charges against Matthew Sinkiewicz (Appellee), a former sergeant with the Southeastern Pennsylvania Transportation Authority (SEPTA) police force, in two cases involving his assault of two protestors. On appeal, the Commonwealth contends it presented prima facie evidence that Appellee attempted to cause serious bodily injury to the victims and caused bodily injury to the victims with a deadly weapon to support two counts of aggravated assault at each docket. See 18 Pa.C.S. § 2702(a)(1), (4). For the reasons below, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. PATRICK HORAN

FILED: April 5, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05012-23o.pdf?cb=1>

“Patrick Horan appeals from the order, entered in the Court of Common Pleas of Northampton County, dismissing his petition filed pursuant to the Post Conviction Relief Act (PCRA). See 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm the order.”

COMMONWEALTH OF PENNSYLVANIA v. SHAINA ANN HELEN GRUSH

FILED: April 11, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-A29001-22o%20-%20105494650218898135.pdf?cb=1>

“The Commonwealth appeals from the trial court’s order granting Appellee Shaina Ann Helen Grush’s motion to exclude the preliminary hearing testimony of Jonathan Lubinsky, who died before the matter could proceed to trial. The trial court determined that Appellee had been denied the “full and fair opportunity for cross-examination” required by law based on the Commonwealth’s failure to disclose to preliminary hearing counsel three items: Lubinsky was actively supervised by Butler County’s probation department; Lubinsky had pending charges; and Lubinsky’s lengthy criminal record of crimen falsi convictions. The Commonwealth maintains that Appellee received a full and fair opportunity for cross-examination, and that her confrontation rights will be adequately served by introducing this impeachment material via other means, such as stipulations by the Commonwealth. Additionally, the Commonwealth contends that all the material was publicly accessible, and that Appellee’s counsel specifically had reason to know about the material since its office had represented Lubinsky in several of those cases. We reverse and remand.”

COMMONWEALTH OF PENNSYLVANIA v. JONATHAN CHARLES LAUR

FILED: April 11, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S01041-23o%20-%20105494657218906602.pdf?cb=1>

“Appellant, Jonathan Charles Laur, appeals from the judgment of sentence imposed by the Court of Common Pleas of Clarion County (trial court) following his plea of guilty to simple assault. Appellant challenges the portion of his sentence that ordered him to pay restitution to the Clarion County Jail. For the reasons set forth below, we vacate the restitution portion of Appellant’s sentence.”

COMMONWEALTH OF PENNSYLVANIA v. JEFFREY WARREN SHACKELFORD

FILED: April 14, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S06034-23o%20-%20105499373221079426.pdf?cb=1>

“Jeffrey Warren Shackelford (“Appellant”) appeals from the February 27, 2019, judgment of sentence entered in the Court of Common Pleas of Lancaster County after a jury found him guilty on Docket 4171-2021 of Drug Delivery Resulting in Death and Criminal Use of a Communication Facility and guilty on Docket 3662-2021 of Possession with Intent to Deliver 17 grams of Fentanyl and Possession with Intent to Deliver 87.68 grams of Methamphetamine. After careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. NNAEMEKA ANI

FILED: April 17, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S35011-22o%20-%20105500328221403255.pdf?cb=1>

“The Commonwealth appeals from the trial court’s order granting Appellee Nnaemeka Ani’s motion to suppress all evidence recovered from the execution of five search warrants. Each warrant pertained to Appellee’s cell phone, its iCloud1 backups, or its service provider records. The trial court determined that each warrant was lacking in probable cause and/or overbroad. The Commonwealth has abandoned its challenge to the first two warrants, arguing that the remaining three were valid. Our primary task is to decide the applicability of *Commonwealth v. Green*, 265 A.3d 541 (Pa. 2021), issued after the trial court’s order, which held that the standard announced in *Commonwealth v. Grossman*, 555 A.2d 896 (Pa. 1989) (holding that the Pennsylvania Constitution requires a description of items to be seized “as specifically as is reasonably possible”), applies to searches of digital spaces. Alternatively, the Commonwealth asserts that the three warrants established probable cause to at least some of the items requested in the warrants and that the trial court erred by failing to conduct a severability analysis. We conclude that the Commonwealth failed to establish probable cause to search Appellee’s cell phone for the vast majority of items requested. We agree that the doctrine of severability applies and hold that the Commonwealth may use locational data generated by the phone as well as data pertaining to Appellee’s use of the phone’s flashlight function with respect to the third warrant. We agree with Appellee that the fourth and fifth warrants must be suppressed as fruit of the poisonous tree. We therefore affirm in part, reverse in part, and remand for further proceedings.”

COMMONWEALTH OF PENNSYLVANIA v. RAYMOND CHARLES ROWE

FILED: April 18, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S06036-23o%20-%20105502495221599083.pdf?cb=1>

“Raymond C. Rowe (“Appellant”) appeals from the order entered in the Court of Common Pleas of Lancaster County denying his motion for post-conviction DNA testing, filed pursuant to 42 Pa.C.S.A. § 9543.1 of the Post Conviction Relief Act (“PCRA”), in which he requested DNA collection and testing of potential Touch DNA samples from various items recovered from the murder scene of his victim. After careful consideration, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. WILFREDO SANTIAGO

FILED: April 26, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S38037-22o%20-%20105517443222541041.pdf?cb=1>

“Wilfredo Santiago appeals from the judgment of sentence imposing an aggregate period of seven to 14 years’ incarceration, after a jury convicted him of aggravated assault and related offenses. He challenges the sufficiency of the evidence for the aggravated assault charge. Santiago punched a police officer knocking him down four steps causing him to hit his head on the concrete sidewalk and giving him a concussion – a serious brain injury. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. JOHN EDWARD KURTZ

FILED: April 28, 2023

<https://www.pacourts.us/assets/opinions/Superior/out/J-S10032-22o%20-%20105520109222821945.pdf?cb=1>

“Appellant, John Edward Kurtz, appeals from the judgment of sentence imposed following his conviction of numerous offenses, including rape, kidnapping, attempted rape, and attempted kidnapping, involving five victims. After careful review, we affirm.”

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