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## Criminal Justice Update - May 2023

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## Criminal Justice Update - May 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
- Updates from the Courts
  - US Supreme Court
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  - PA Superior Court

### 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 newsletter produced by the ACBF Fellow at Gettysburg College.

May 2023

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

**Comments or questions?  
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## Updates from PA Governor's Office

*\*No new updates this month*

## Updates from the PA Legislature

### Criminal Law & Procedure

#### House Bill 1018 – Extreme Risk Protection Orders

**Final Passage in the House: May 22, 2023**

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2023&sind=0&body=H&type=B&bn=1018>

House Bill 1018 would amend Title 18 (Crimes and Offenses) and Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, dealing with firearms and other weaponry, “further providing for persons not to possess, use, manufacture, control, sell, or transfer firearms and for abandonment for firearms, weapons, or ammunition; in community and municipal courts.”

#### House Bill 714 – Background Checks for Firearms

**Final Passage in the House: May 22, 2023**

House Bill 717 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in firearms and other weapons, “repealing provisions relating to sale or transfer of firearms,” providing for both the Pennsylvania State Police and the duty to report to United States Immigration and Customs Enforcement.

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2023&sind=0&body=H&type=B&bn=714>

## Updates from the Courts

### US Supreme Court

#### **SANTOS-ZACARIA V. GARLAND**

**FILED: May 11, 2023**

[https://www.supremecourt.gov/opinions/22pdf/22-210\\_7mi8.pdf](https://www.supremecourt.gov/opinions/22pdf/22-210_7mi8.pdf)

“Under 8 U. S. C. §1252(d)(1), a noncitizen who seeks to challenge an order of removal in court must first exhaust certain administrative remedies. This case presents two questions regarding that statutory provision. For the reasons explained below, we hold that §1252(d)(1) is not jurisdictional. We hold further that a noncitizen need not request discretionary forms of administrative review, like reconsideration of an unfavorable Board of Immigration Appeals determination, in order to satisfy §1252(d)(1)’s exhaustion requirement.”

#### **TWITTER, INC. V. TAAMNEH**

**FILED: May 18, 2023**

[https://www.supremecourt.gov/opinions/22pdf/21-1496\\_d18f.pdf](https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf)

“Under 18 U. S. C. §2333, United States nationals who have been “injured . . . by reason of an act of international terrorism” may sue for damages. §2333(a). They are not limited to suing the individual terrorists or organizations that directly carried out the attack, however. That is because §2333(d)(2) also imposes civil liability on “any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.” Victims of terrorist acts therefore may seek to recover from those who aided and abetted the terrorist act that injured them.”

#### **GONZALEZ V. GOOGLE LLC**

**FILED: May 18, 2023**

[https://www.supremecourt.gov/opinions/22pdf/21-1333\\_6j7a.pdf](https://www.supremecourt.gov/opinions/22pdf/21-1333_6j7a.pdf)

“In 2015, ISIS terrorists unleashed a set of coordinated attacks across Paris, France, killing 130 victims, including Nohemi Gonzalez, a 23-year-old U. S. citizen.<sup>1</sup> Gonzalez’s parents and brothers then sued Google, LLC, under 18 U. S. C. §§2333(a) and (d)(2), alleging that Google was both directly and secondarily liable for the terrorist attack that killed Gonzalez.<sup>2</sup> For their secondary-liability claims, plaintiffs alleged that Google aided, abetted, and conspired with ISIS. All of their claims broadly center on the use of YouTube, which Google owns and operates, by ISIS and ISIS supporters. The District Court dismissed plaintiffs’ complaint for failure to state a claim, though it offered plaintiffs leave to amend their complaint. Instead, plaintiffs stood on their complaint and appealed, and the Ninth Circuit affirmed in a consolidated opinion that also addressed *Twitter, Inc. v. Taamneh*, U. S. (2023). 2 F. 4th 871 (2021). With respect to this case, the Ninth Circuit held that most of the plaintiffs’ claims were barred by §230

of the Communications Decency Act of 1996, 110 Stat. 137, 47 U. S. C. §230(c)(1). The sole exceptions were plaintiffs’ direct and secondary-liability claims based on allegations that Google approved ISIS videos for advertisements and then shared proceeds with ISIS through YouTube’s revenue-sharing system. The Ninth Circuit held that these potential claims were not barred by §230, but that plaintiffs’ allegations failed to state a viable claim in any event.”

#### **DUPREE V. YOUNGER**

**FILED: May 25, 2023**

[https://www.supremecourt.gov/opinions/22pdf/22-210\\_7mi8.pdf](https://www.supremecourt.gov/opinions/22pdf/22-210_7mi8.pdf)

“In *Ortiz v. Jordan*, we held that an order denying summary judgment on sufficiency-of-the-evidence grounds is not appealable after a trial. 562 U. S. 180 (2011). Thus, a party who wants to preserve a sufficiency challenge for appeal must raise it anew in a post-trial motion. The question presented in this case is whether this preservation requirement extends to a purely legal issue resolved at summary judgment. The answer is no.”

### PA Supreme Court

#### **COMMONWEALTH OF PENNSYLVANIA V. KOGER**

**FILED: May 23, 2023**

<https://www.pacourts.us/assets/opinions/SUPREME/out/J-60-2022co%20-%20105537026224454290.pdf>

“In *Commonwealth v. Foster*, 214 A.3d 1240 (Pa. 2019), this Court examined the statutory framework governing probation revocations and concluded that, under the “clear and unambiguous” language of 42 Pa. C.S. §9771(b) (Modification or revocation of order of probation) and 42 Pa. C.S. §9754(b) (Order of probation), “a court may find a defendant in violation of probation only if the defendant has violated one of the ‘specific conditions’ of probation included in the probation order or has committed a new crime.” *Foster*, 214A.3d at 1250. The present case is not about probation; it is about parole. Purporting to rely on certain passages from *Foster* and the statutes we examined in that decision, the Superior Court below held “a sentencing court may not delegate its statutorily pr[e]scribed duties” but must instead personally “communicate any conditions of probation or parole as a prerequisite to violating any such condition.” *Commonwealth v. Koger*, 255 A.3d1285, 1291 (Pa. Super. 2021) (emphasis added). We granted the Commonwealth’s petition for allowance of appeal to consider whether the Superior Court improperly expanded *Foster* in this regard. As we conclude it did, we reverse in part.”

#### **COMMONWEALTH OF PENNSYLVANIA V. ARMOLT**

**FILED: May 16, 2023**

<https://www.pacourts.us/assets/opinions/SUPREME/out/J-53-2022co1%20-%20105536949224447781.pdf>

“Beginning when he was ten years old, and continuing until he was seventeen, Herman Armolt repeatedly physically and sexually assaulted his minor stepsister, C.L. The Commonwealth did not

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prosecute Armolt for these crimes until almost thirty years later. When he was prosecuted, Armolt was no longer a “child” for purposes of the Juvenile Act. 1 Therefore, he could not have been tried in a juvenile court.2 This does not mean that Armolt could not be tried in any court. To the contrary, as the Majority correctly holds, “adult criminal courts possess jurisdiction over the prosecution of an individual who is over the age of twenty-one for crimes committed as a juvenile.”3 Armolt cannot escape (1) 42 Pa. C.S. § 6302 (defining “child” as a person who “is under the age of 18 years” or “is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years”). (2) 42 Pa.C.S. § 6303(a)(1) (limiting the juvenile court’s jurisdiction “exclusively to . . . [p]roceedings in which a child is alleged to be delinquent or dependent”). (3) Maj. Op. at 1. [J-53-2022] [MO: Dougherty, J.] - 2 prosecution for the serial abuse that he inflicted upon his stepsister merely because sufficient time has elapsed to place him beyond the reach of the Juvenile Act.”

## PA Superior Court

*(Reporting only cases with precedential value)*

### **COMMONWEALTH OF PENNSYLVANIA V. MALONE**

**FILED: May 9, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S27045-22o%20-%20105531077223894249.pdf?cb=1>

“The Commonwealth appeals from the trial court order granting the motion of Phillip Malone (“Malone”) to dismiss the charges against him pursuant to Pennsylvania Rule of Criminal Procedure 600. We reverse.”

### **COMMONWEALTH OF PENNSYLVANIA V. MURCHISON**

**FILED: May 10, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-E02004-22o%20-%20105532214224017910.pdf?cb=1>

“Derek Murchison (Appellant) appeals from an order entered in the Philadelphia County Court of Common Pleas that dismissed, without a hearing, his third petition filed pursuant to the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. As will be discussed below, a jury convicted Appellant of first-degree murder and related charges in connection to the death of Linda Willis (the victim). Appellant contends the PCRA court erred in finding he was not entitled to relief when new DNA1 evidence revealed that (1) someone, not Appellant, left blood at the crime scene, and (2) someone, again not him, touched the weapon used in the commission of the murder, which contradicts the prosecution’s theory of the case. Appellant suggests that if this new evidence had been presented to the jury, it would have reached a different outcome; and therefore, the court erred in dismissing his petition. For the reasons below, we decline Appellant’s proffer to disturb the court’s determination and affirm its order.

Here, the PCRA court found the following, [Appellant] is unable to prove that the more recent DNA results are not cumulative and would have likely compelled a different verdict.”

### **ROUSE V. ROSENBERG**

**FILED: May 15, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A08034-23o%20-%20105537087224460005.pdf?cb=1>

“This case involves a cause of action for emotional distress resulting from interference with a dead body. Under § 868 of the First Restatement of Torts, as adopted by our Supreme Court in *Papieves v. Lawrence*, 263 A.3d 118, 120 (Pa. 1970), “one who wantonly mistreats or, acting without privilege, intentionally withholds the body of a decedent is liable in tort to the member of the decedent’s family who is entitled to the disposition of the body.” The issue here is whether a person “intentionally withholds” a missing murder victim’s body where they allegedly acted as accessories after the fact but are not alleged to have helped hide the body or even know its location.

Because we are bound by our existing precedent, we will not expand the tort of interference with dead bodies to include the definition under the Second Restatement of Torts. If Rouse seeks such an expansion, it will need to come from our Supreme Court.”

#### **COMMONWEALTH OF PENNSYLVANIA V. BARKMAN**

**FILED: May 19, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S36041-22o%20-%20105542500224999854.pdf?cb=1>

“Appellant, Nicole Barkman, appeals a probationary judgment of sentence imposed after a jury found her guilty of endangering the welfare of children. Appellant, Eric James Barkman, appeals carceral judgments of sentence imposed after a jury found him guilty of two counts of endangering the welfare of children. The Appellants, a wife and a husband were jointly tried and the focus of their trial and the basis for their charges were unsafe and unsanitary conditions in the home that they were alleged to share with their five children, who were between the ages of two and thirteen years old.1 N.T. 8/17/21, 2.277, 2.189. On direct review, Appellant Wife challenges the sufficiency and weight of the evidence presented at trial. Appellant Husband joins in the claims raised by his wife and asserts a prosecutorial misconduct claim. Upon review, we affirm.

We hold that the Appellants’ claims concerning the sufficiency of the evidence and the consistency of their verdicts are denied for lack of merit. Appellant Wife waived her appellate challenge to the weight of the evidence. To the extent that Appellant Husband joins his wife’s weight claim based on his preserved post-sentence weight claim, that claim lacks merit. Appellant Husband’s prosecutorial misconduct claim is waived for lack of timely preservation and development. Judgments of sentence affirmed.”

#### **COMMONWEALTH OF PENNSYLVANIA V. GRAY**

**FILED: May 25, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A05041-23o%20-%20105549091225595771.pdf?cb=1>

“Nathaniel Gray (Appellant) appeals from the judgments of sentence imposed after a jury convicted him of two counts each of robbery, criminal conspiracy, terroristic threats, and possession of an instrument of crime (PIC). 1 After careful review, we affirm.

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Based on the foregoing, we discern no manifest abuse of discretion by the trial court in consolidating the three cases where Appellant received a fair trial and failed to prove that he suffered undue prejudice. See Lively, supra; Janda, supra. Judgments of sentence affirmed.”

#### **COMMONWEALTH OF PENNSYLVANIA V. HORLICK**

**FILED: May 26, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S14007-23o%20-%20105550817225735082.pdf?cb=1>

“Austin Horlick appeals the judgment of sentence entered by the Allegheny County Court of Common Pleas on May 31, 2022, for his conviction of strangulation and simple assault. Specifically, Horlick claims the evidence was insufficient to sustain his strangulation conviction because the Commonwealth could not establish he intentionally or knowingly impeded the breathing of the victim. We find the claim without merit and affirm.”

#### **COMMONWEALTH OF PENNSYLVANIA V. COPES**

**FILED: May 26, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S10015-23o%20-%20105550961225755680.pdf?cb=1>

“The Commonwealth of Pennsylvania appeals from the Philadelphia Common Pleas Court order granting John Copes’s motion to dismiss for the Commonwealth’s failure to consolidate prosecutions under Pennsylvania’s compulsory joinder rule, 18 Pa.C.S. A. § 110. The Commonwealth argues that compulsory joinder does not apply because Copes’s unlawful possession of a firearm charges did not arise from the same criminal conduct or episode as the previous prosecution for simple assault. We agree and reverse.”

#### **COMMONWEALTH OF PENNSYLVANIA V. WESTLAKE**

**FILED: May 31, 2023**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A06016-23o%20-%20105554517226219099.pdf?cb=1>

“Appellant Christopher Sean Westlake appeals pro se from the judgment of sentence entered after a jury convicted him of two counts of driving under the influence of a controlled substance (DUI).<sup>1</sup> On appeal, Appellant contends that the trial court erred in denying his second omnibus motion as untimely. After review, we affirm Appellant’s convictions, vacate the judgment of sentence, and remand for resentencing.

For these reasons, we discern no error in the trial court’s order denying Appellant’s second omnibus motion as untimely. We, therefore, affirm Appellant’s convictions. However, because Appellant’s two DUI sentences should have merged for sentencing purposes, we vacate the sentence of no further penalty for 75 Pa.C.S. § 3802(d)(1)(iii) (DUI-metabolite of schedule I, II, or III). Further, we vacate Appellant’s judgment of sentence 75 Pa.C.S. § 3802(d)(1)(ii) and remand for resentencing consistent with this opinion.”