

2018 Criminal Law Caselaw Update

PA SUPERIOR COURT-1ST DEGREE MURDER

- Commonwealth v. Ward, 2018 PA Super. 142 (6/1/18)
- Evidence held insufficient to disprove a claim of self defense when a defendant attempted to hide evidence (i.e.. Consciousness of Guilt), gave differing versions of events and then admitted shooting and killing the complainant

PA SUPERIOR COURT-RIGHT OF REPRESENTATION IN PRO SE CRIM. CASE

- Commonwealth v. Tejada, 2018 Pa. Super. 145 (6/1/18)

Appellate court HELD: while the appointment of “standby legal counsel” is NOT required when a defendant wishes to rep himself pro se, the judicial discretion not to appoint legal counsel ends when the defendant is involuntarily removed from the courtroom through trial!

DEFECTIVE SEARCH WARRANT ISSUE

- Commonwealth v. Leed, No. 122 MAP 2016 (6/1/18)
- PA SUPREME COURT HELD:
- A statement contained in one paragraph of a S&SW application which, when read in context of the ENTIRE affidavit, and was deemed an “inadvertent error”, does not as a matter of law, render information stale and lacking in probable cause.
- S&SW WAS HELD TO BE LEGAL

DEADLY WEAPON ENHANCEMENT ISSUE

- **Commonwealth v. Smith**, No. 36 MAP 2017 (June 1, 2018)
 - PA SUPREME COURT
 - Deadly weapon enhancement DID NOT APPLY HERE to a defendant convicted of AA based on a car accident where Defendant was found to have acted “recklessly” but did not specifically intend to injure the victim.
 - Standard range sentence was appropriate under the circumstances

PA SUPREME COURT-ENTRY INTO HOME

- **Commonwealth v. Wilmer**, No. 40 MAP 2017 (PA Supreme Court, September 20, 2018)-
 - Police officer who properly enters a home to provide emergency aid may not, as a matter of law, reenter these premises after the emergency has passed in order to perform administrative tasks as a follow up since the emergency aid exception to the search and seizure warrant requirement for homes does not permit the reentry after the underlying emergency has dissipated.

Commonwealth v. Valvida

- In this case the PA Supreme Court addresses the scope of consent given by a motorist to law enforcement for the search of his vehicle
- FACTS:
- At approximately 4:30 p.m. on December 12, 2013, Troopers Hoy and Long were traveling together in a marked police cruiser on Interstate 80 in Centre County, Pennsylvania.
- They then drove behind Valvida (who was driving a rental mini-van w/ Michigan plates)
- Troopers followed Valvida for two miles where the troopers pulled Valvida over for failing to use his turn signals to move in and out of traffic

VALVIDA, CONT'D...

- After requesting Valvida's license and registration information Trooper Hoy notice that
- Valvida was "nervous and shaking"
- Valvida, on Trooper questioning, then explained that he had originally planned to fly there from Fort Lauderdale, Florida, but his plane was rerouted to Detroit, Michigan. He missed his connecting flight to New Jersey and decided to drive the rest of the way
- During this convo Troopers notice packages in the rear of this minivan

- But Trooper Hoy noticed that the packages weren't damaged from travel nor did they have any markings from an airline (whatever the hell that means)...
- Trooper Hoy then testified to his "familiarity" with the tactic of wrapping boxes containing drugs in Christmas paper during the holiday season for camouflage.
- The Trooper also noticed that Valvida's rented his mini-van for a one way trip. Trooper Hoy testified that drug dealers usually rent vehicles one way to conduct drug crimes in his experience...
- Trooper Hoy then called an off duty Trooper, who was 30 miles away, to conduct a drug dog search of this vehicle

- Trooper Hoy then ran a record check on Valvida which showed that the defendant had been previously charged with PWID in Florida.
- Then Troopers Hoy and Long asked Valvida to step out of his mini-van where they explained why they were giving him a traffic ticket.
- Then Hoy asked if Valvida would answer some addt'l questions which he did
- Then Hoy requested consent to search which was granted
- Hoy later testified that he didn't remember if he told Valvida he had previously sent for another Trooper to conduct a canine search

- The defendant sat in the rear of the Troopers' vehicle (while waiting for the canine search Trooper to arrive).
- Then when the other Trooper arrived Hoy and Long removed the two Christmas package AND a suitcase from Valvida's mini-van
- The canine "alerted" on both Christmas packages
- Subsequent search of these two packages found sealed packages of marijuana
- Troopers then seized the boxes, a tablet and Valvida's cellphone

VALVIDA CHARGED WITH PWID AND K&I

- At suppression and on appeal:
- Valdivia alleged that his consent was not voluntarily given, and that even if it was voluntary, the canine sniff and the lengthy delay exceeded the scope of any purported consent he gave. He argued that all evidence obtained from his vehicle must be suppressed pursuant to the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution.

- The suppression court denied Valdivia's motion and sentenced him to 11 ½ -23 months imprisonment PLUS 30 days of probation
- Suppression Court found a combo platter of coercion and non-coercion but said non-coercion outweighed coercion in denying the defendant's motion
- An appeal ensued...and the Superior Ct. Affirmed the Lower Court

Appeal to the PA Supreme Court the primary issue:

- Whether, in a case of first impression, the Superior Court erred in holding that a reasonable person would have understood that their consent to a roadside search of their vehicle would encompass a canine sniff of all of the packages contained inside the vehicle, and that said consent was knowing, intelligent, and voluntary where the police officers withheld pertinent information about the forthcoming search from [Valdivia], including that the canine search would not start any sooner than an hour from when [Valdivia]'s consent was given?

- Court held: 1) Superior Ct. was wrong in holding that the level of intrusion involved with a canine sniff, as compared to a human search, has any relevance to the question before the court.
- 2) cannot conclude that a reasonable person in Valdivia's position would have understood that his consent to allow two human officers to search his vehicle would somehow operate to permit the search to be conducted by a canine trained in drug detection.
- 3) the length of time that passed (40 minutes) between Valdivia's consent to search and the occurrence of the search was beyond that which a reasonable person would have expected and understood.

AND....

- 4) Valdivia gave a general consent to two human police officers to search his car. The search that occurred exceeded the scope of that consent.
- 5) The court reversed the lower court and suppressed all evidence seized.

Megan's Law/ SORNA

- - Commonwealth v. Derhammer, 173 A.3d 723 (Pa. 11/22/2017) (Luzerne).
- PA Supreme Court held that Commonwealth cannot punish an individual for conduct made a crime by an amended statute when the original version of the statute was declared unconstitutional in its entirety

- Comm v. Hoffman, 2018 Pa. Super. 397 (10/31/18) Held that evidence was NOT sufficient to sustain a third degree murder charge since the evidence insufficiently showed malice when the defendant fell off of a couch onto her infant due to a drug induced stupor. And a finding of Endangering the Welfare of Children was also incorrectly treated as an F3 where there was NO evidence or even an allegation that this offense occurred as part of a course of conduct.

- [Comm. v. McCoy](#), 2018 Pa. Super. 305 (Nov. 14, 2018)- Insufficient evidence of risking a catastrophe (18 Pa. 3301 and REAP 18 Pa. 2705) where def was growing marijuana inside of his apartment when the remainder of his home was unoccupied and the nearest home was feet away and where the defendant used fluorescent lamp that would not generate much heat; rather than use an irrigation system, the defendant watered the marijuana plants with a spray bottle and since he was on disability he had plenty of free time to monitor the operation.

- [Comm. v. Nobles](#), 2018 Pa. Super. 396 (10/31/18)- Held that the lower court erred in failing to consider the defendant's request under 42 Pa. C.S. 9760(1) for credit for time spent in a juvenile detention facility when the reason for the detention was directly related to the conduct leading to the conviction.

Commonwealth v. Livingstone, 174 A.3d 609
(Pa. 11/27/2017) (Erie)

- For the first time in PA, Supreme Court addressed the public servant and emergency aid exceptions under the Community Caretaking Doctrine exception to the warrant requirement.

- Although Court encourages such caretaking activity, it must comply with 4th Amendment protections. Court initially concluded appellant, who had pulled to the side of the road and appeared to be putting an address in her GPS system, was subjected to an investigatory detention without reasonable suspicion where an officer, checking to see if she required help, pulled alongside her with his emergency lights activated.

- While Court recognized the public servant or public safety exception to the warrant requirement under the Community Caretaking Doctrine, it found the exception inapplicable to justify appellant's detention where the officer didn't articulate any facts reasonably suggesting that she required assistance.

Commonwealth v. Sarvey

- PA Superior Court; 2018 Pa. Super. 307 (11/16/18)
- Appellate court held: merit in claim that counsel was ineffective for failing to appeal an aggregate sentence of 10 ½ to 24 year sentence for bring two tablets of controlled substance into a jail and providing one to another inmate though sentences were within the standard guideline range BUT were all running consecutively, finding sentence, under these circumstances, was unduly harsh

Commonwealth v. Resto, 179 A.3d 18 (Pa. 2/21/2018) (Schuylkill) (Commonwealth appeal)

- A jury convicted appellee of several offenses, including rape of a child, and trial court imposed mandatory minimum for the offenses pursuant to 42 Pa.C.S.A. § 9718(a)(3).
- Relying on Supreme Court's decision in Commonwealth v Wolfe, 140 A.3d 651 (Pa. 2016), Superior Court determined that § 9718(c) had been deemed unconstitutional and non-severable and concluded imposition of the mandatory minimum was illegal and vacated the sentence.

- Appellate Court REVERSAL!
- Supreme Court held that § 9718(a)(3) doesn't implicate Alleyne because this subsection requires no proof of any predicate or aggravating facts. It also found § 9718(a)(3) to be severable so these mandatories remain effective. They include rape of a child, 18 Pa.C.S.A. § 3121(c), (d) and aggravated indecent, 18 Pa.C.S.A. § 3125(a)(7), (b).

Commonwealth v. Brown, 185 A.3d 316 (Pa. 6/1/2018) (Philadelphia) (Commonwealth appeal)

- Appellee attended party after hiding gun in wheel well of a nearby car. When appellee began arguing with victim at the party, co-defendant retrieved the gun and gave it to appellee who fired four shots into the victim.
- The medical examiner who performed the autopsy concluded cause of death was multiple gunshot wounds and that manner of death was homicide, but he was no longer working for the office at the time of trial.
- Over defense objection, his report was admitted into evidence and another medical examiner provided expert testimony on the report and photos. Appellant was convicted of third-degree murder and related offenses.

- Superior Court affirmed the sentence but concluded trial court erred in allowing admission of autopsy report in absence of original medical examiner's testimony. Nevertheless, it deemed the error harmless.
- PA Supreme Court Agreed!
- Supreme Court determined primary purpose for preparation of autopsy report in this matter was to prove past events relevant to a later criminal prosecution, and any person creating report would reasonably believe it would be available for later use at trial.

- Thus, the report is testimonial in nature. Consequently, the report was improperly introduced into evidence without the original medical examiner's testimony. Court concluded admission was harmless error because the report was merely cumulative of 2nd medical examiner's independent opinion as to the cause of death, which was properly admitted.

Commonwealth v. Smith, 186 A.3d 397 (Pa. 6/1/2018) (York) (Commonwealth appeal)

- FACTS:
- Appellee drank at several bars and spoke to three men about buying drugs. All left and got in appellee's car. As he approached a crosswalk, appellee failed to slow down and struck a pedestrian, causing severe injuries, and then fled scene. Appellee was intoxicated and distracted but there was no suggestion he meant to hit the victim or that he even saw the victim before striking him. It was undisputed his conduct was reckless but not knowing. Appellee pled guilty to aggravated assault, DUI and related offenses.

- At sentencing Commonwealth wanted the court to apply the DWUE (Deadly Weapon Use Enhancement)
- Court denied DWUE and Commonwealth Appealed.
- PA Superior Court denied Commonwealth Appeal.
- Commw. Appeal to PA SUPREME COURT

HELD:

- In this case DWUE DOES NOT APPLY!
- It held that DWUE sentencing enhancement does not apply to defendant's use of a motor vehicle without proof he used the vehicle with the intent to threaten or injure a victim.

- **Commonwealth v. Angel Castro**
Commonwealth v. Wendy Romero- Nos. 37 EAP 2016, 38 EAP 2016,
PA SUPREME COURT (April 26, 2018)

Major Issue In This Case...

- Is it legal to serve an arrest warrant for someone who absconded from a half way house at an address you mistakenly believe to be the parolee's address and then, not finding the parolee, you find weapons and drugs at this third person's home from your search?

• **ANSWER IS...NO!**

- PA Supreme Court laid out a “bright line” rule now explicitly requiring a S & SW in these cases
- Remanded to the lower court to allow Commonwealth to retroactively enter the applicable arrest warrant to see if it has specificity required to search
- PA Supreme Court held that there is no “reasonable belief” standard in these kinds of cases (as stated by the PA Superior Court)!

Furthermore...In Dicta....

- PA Supreme Court admonished the PA Superior Ct. for ignoring suppression court’s findings of fact when, in its opinion, it decided to assert that the defendants, willingly let the agent enter and willingly let him search their home.

BOTTOM LINE

- When seeking to execute an arrest warrant, law enforcement entry into a home must be authorized by a warrant reflecting magisterial determination of probable cause to search that home, whether by separate search warrant or contained within the arrest warrant itself. Absent such a warrant, an entry into a residence is excused only by a recognized exception to the search warrant requirement.