

USING CRIMINAL CASES IN CIVIL MATTERS

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FIFTH AMENDMENT

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- Leftowitz v. Turley, 414 U.S. 70, 94 S.Ct. 316 (1973).
 - The United States Supreme Court held that while the 5th Amendment provides that no person shall be compelled in a criminal case to be a witness against himself, it also allows the individual to not answer official questions put to him in any proceeding civil or criminal, formal or informal, where the answers might incriminate him or subject him to criminal responsibility in future criminal proceedings.

FIFTH AMENDMENT

- Veloric v. John Doe, 123 A.d3d 781 (Pa.Super 2015).
 - Fifth Amendment does not provide a blanket protection against all discovery in civil action, nor does it allow party to avoid appearance in court-ordered deposition.
 - Invocation of Fifth Amendment privilege is specific to the testimony being compelled.
 - Privilege does not apply to non-communicative acts, such as appearing in court or for a deposition.

FIFTH AMENDMENT

- Galiotti v. Greatwide Dedicated Transport I, LLC, and Franklin D. Wyatt, 2016 WL 1071024 (M.D. Pa.).
 - (Memorandum Opinion)
 - Granted Defendants' Motion to Stay Discovery, in part, but only as to discovery sought from Defendant Wyatt, pending resolution of his criminal proceedings.

CONVICTIONS

CONVICTIONS FOR SUMMARY OFFENSES/ARD

- Stumpf v. Nye, 950 A.2d 1032 (Pa.Super. 2007).
 - Court determined that evidence of Defendant's guilty plea to a summary offense of disorderly conduct in connection with the incident was properly excluded.
 - The danger of unfair prejudice was not outweighed by the probative value of the testimony.
 - Convictions for summary offenses or other minor matters are generally inadmissible in subsequent civil proceedings based on the same incident, the only exception being if the summary offense is in operative fact in a non-summary criminal offense.

CONVICTIONS FOR SUMMARY OFFENSES/ARD

- Commonwealth v. Hoover, 16 A.3d 1148 (Pa.Super. 2011)
 - The Court determined that the Commonwealth may not question witnesses about allegations of other criminal misconduct which did not result in a conviction, such as participation in the ARD program.
 - Character witnesses on behalf of the accused may not be questioned with respect to their knowledge of the Defendant's arrests which did not lead to a conviction.

CONVICTIONS FOR TRAFFIC VIOLATIONS

- Simpson v. Robinson, 361 A.2d 387 (Pa. Super. 1976).
 - Evidence of a conviction for a traffic violation or minor misdemeanor in a civil suit arising out of the same events is not admissible.
 - Evidence of an acquittal in a criminal case is not admissible in or relevant to a civil case on the same facts.
 - Evidence of an arrest or issuance of a citation, or lack thereof, is also in admissible as it has no bearing on the issue of the driver's negligence.

IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION

- Pennsylvania Rule of Evidence 609
 - Evidence of convictions for crimes which involve dishonesty or false statement must be admitted into evidence to attack the credibility of a witness.
 - If more than 10 years have passed since the conviction or release from confinement, whichever is later, such evidence is only admissible if its probative value is substantially outweighed by its prejudicial effect and reasonable written notice of intent to use the same is provided to the adverse party
 - If a conviction is subject to a pardon or finding of innocence, or a pardon or equivalent procedure based on a finding of rehabilitation, it is not admissible.

POLICE REPORTS

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- Police Reports are Inadmissible because of Hearsay (Pennsylvania Rules of Evidence 802)
 - Phillips v. Locic, 86 A.3d 906, 921 (Pa.Super. 2014)
 - Court held that police report was not admissible under the official records exception to the hearsay rule found at 42 Pa.C.S.A. §6104(a), (b).

POLICE REPORTS

- 75 Pa.C.S.A. § 3751 (b)(4)
 - Copies of police reports shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

POLICE REPORTS

- Harris v. Phila. Facilities Mgmt. Co., 106 A.3d 183 (Pa.Cmwlth. 2014)
 - Court determined that cross examining a police officer and accident reconstructionist expert with a police report was precluded, since the opinions in the report were inadmissible hearsay.
 - The authoring Officer did not witness the accident or testify in Court.
 - The Officer that did testify did not rely upon the report to refresh his recollection, testified based upon his own recollection of the events at issue, and did not testify concerning the contents of the report.

DUI/DRAM SHOP

DUI/DRAM SHOP

- Fair Share Act
 - 42 Pa.C.S. § 7102 (a.1) Recovery against joint defendant; contribution.
....
 - (3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against defendant for the total dollar amount awarded as damages:
....
 - (v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (PL 90, No. 21), known as the Liquor Code.

RESTITUTION

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- 18 Pa.C.S.A. § 1106 – Restitution for injuries to person or property
(a) General rule. – Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

RESTITUTION

- 18 Pa.C.S.A. § 1106(g) Preservation of private remedies.
No judgment or order of restitution shall debar the owner of the property or the victim who sustained personal injury, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.
