

**IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

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COMMONWEALTH OF PENNSYLVANIA,	:	
:	:	
Respondent,	:	
	:	
v.	:	Nos. 1357-1359 (1981)
	:	
MUMIA ABU-JAMAL,	:	
	:	
Petitioner.	:	

**PETITIONER, MUMIA ABU-JAMAL’S SUBMISSION OF ADDITIONAL
DOCUMENTS WITH INDEX, DISCLOSED BY THE COMMONWEALTH IN
JANUARY 2023**

Descriptive Index List

Exhibit 1 (DAO:000410-432): Handwritten notes from the Commonwealth’s office on Petitioner’s Motion for Discovery filed prior to the 1995 PCRA hearing, and discussed at pages 13-17 of Petitioner’s Response to Notice of Intent to Dismiss PCRA, 11/16/22 (and attached thereto as Exhibit A). The Handwritten notes include a statement “This we owe, if we haven’t already turned it over,” next to Petitioner’s request for “[a]ny material favorable to the petitioner which is relevant to [g]uilt or punishment, and which is currently within the possession and/or control of the Commonwealth and/or its agents or which was in the possession and/or control of the Commonwealth at any time subsequent to events underlying this prosecution and conviction.” DAO:000414.

Exhibit 2 (DAO:00050-78): Copy of Commonwealth’s Response to Petitioner’s Motion for Discovery filed prior to the 1995 PCRA hearing (pages are in reverse order). This Response includes the Commonwealth’s representations, in response to the discovery request described

above, that “[a]ll Brady material in the Commonwealth’s possession was given to petitioner prior to trial. Since then, the Commonwealth has obtained no new material that either is favorable to petitioner and material to his guilt or punishment . . . ,” even though the Commonwealth in fact did not disclose the voir dire notes supporting Petitioner’s *Batson* claim until January 2019. This is relevant to pages 13-17 of Petitioner’s Response to Notice of Intent to Dismiss PCRA, including PCRA petitioners’ justifiable reliance on the Commonwealth satisfying its disclosure obligations.

Exhibit 3 (DAO:000620): A document entitled “Codicil,” which, based on context, appears to have been attached to a subpoena or other discovery request in connection with the first PCRA proceedings in this case, in which Petitioner requested the “complete file used, prepared and/or maintained by the office of the District Attorney . . . and its agents and assigns” in this case, “including, but not limited to, all . . . notes, rough notes, whether typed or handwritten.” Petitioner has followed up with the District Attorney’s office seeking additional information about this document.

Exhibit 4 (DAO:001-03): Copy of Letter from Petitioner’s then-counsel Rachel Wolkenstein to DA Lynne Abraham, dated April 22, 1997, which, after the disclosure of the McMahon tape, sought additional discovery, including a “[c]opy of all notes, including handwritten notes, regarding jury selection in matter of Commonwealth v. Jamal made by ADA Joseph McGill and any other staff member[.]”

Exhibit 5 (DAO:000799): Copy of handwritten notes in which someone in the District Attorney’s office wrote “Jamal – Voir Dire Notes (Scanned)” and identified an electronic location where the scanned file is saved. This is relevant as the Commonwealth has, to date, disclosed only a portion of the lead prosecutor’s voir dire notes. Petitioner followed up with the Commonwealth requesting production of this electronic file, and any other materials in the Commonwealth’s possession, custody or control that are relevant to the allegations in the present PCRA but were not in the physical case files Petitioner’s counsel has reviewed. Earlier today, counsel for the Commonwealth responded: “We believe we have provided you access to the complete file that we have for this case with respect to the trial court, direct appeal, first four PCRA’s and appeals, and federal court proceedings. In addition, our Information Technology Unit was unable to locate the ‘Jamal-Voir Dire Notes ... Saved Under: My Computer ... Intappl1 on Pdav\Users\Home... Mumia Abu-Jamal ... (Date of Testimony)’ referenced in document 000799.” Petitioner intends to follow up with the Commonwealth to discuss this issue further, and may seek additional intervention from the Court with respect to discovery of these potentially important documents.

Exhibit 6 (DAO: 000022): Transcript of June 29, 1987 Commonwealth v. Cynthia White Preliminary Hearing in the Municipal Court of Philadelphia for charges of Robbery, Theft, Aggravated and Simple Assault, Reckless Endangerment and Possession of Instrument of Crime. The Court’s attention is directed to two portions: (1) At pages 11 and 25, the victim of a knifepoint robbery testifies that the police officer arriving at the scene knew Cynthia White and even though she was identified as the perpetrator she was not arrested nor was she searched for a knife; and (2) At pages 31-33, during the court’s consideration of bail for Cynthia White, Homicide Detective Douglas Culbreth testifies that White was a witness in a very high profile case. Then, despite

White having had 17 failures to appear on her record, the Commonwealth consented to her being released on her own signature.

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IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
(CRIMINAL TRIAL DIVISION)

COMMONWEALTH

vs.

MUMIA ABU-JAMAL
a/k/a WESLEY COOK

NOS. 1357-1359

MOTION FOR DISCOVERY

Petitioner, MUMIA ABU-JAMAL, by and through undersigned counsel, hereby makes the following demand for discovery:

On behalf of the petitioner, MUMIA ABU-JAMAL, demand is hereby made for discovery and inspection of the information and material listed below. Discovery is essential to allow petitioner to further investigate and prepare in establishing the new issues of fact raised in his petition for post-conviction relief pursuant to 42 Pa.C.S.

section 9541 et. seq. ("The Post-Conviction Relief Act" or "PCRA"). The demand is a continuing one from the time of petitioner's arrest and trial and includes information or materials identified below which are not presently in the possession and/or control of the Commonwealth or its agents, but were previously in the possession and/or control of the Commonwealth or its agents or which come within the control of the Commonwealth or its agents at any time hereafter. If information does not exist, please so state. If any of

has never
demanded
before

the information or material sought does exist, but the Commonwealth declines to make it available to the petitioner, please identify the information or material being withheld and the reason for withholding the information or material. The petitioner requests that the Commonwealth provide the discovery sought herein in advance of the evidentiary hearing on petitioner's PCRA petition to further substantiate legal claims and to facilitate meaningful cross-examination at that proceeding. This request is made pursuant the petitioner's rights under the laws of the Commonwealth, petitioner's rights to due process, equal protection, compulsory process, and effective assistance of counsel under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and their parallel provisions under the Pennsylvania Constitution.

now has been [unclear]
no special authority

Petitioner sets forth in his Petition for Post-Conviction Relief, filed simultaneous with this discovery demand, a claim for reversal of the conviction based on a number of Brady violations and other legal claims. The petition and accompanying exhibits demonstrate suppression and falsification at the criminal trial of key aspects of the Commonwealth's case, such as the alleged identification of the petitioner and petitioner's alleged confession to the crime. The volume and seriousness of these Brady violations mandate that the prosecution provide full, complete discovery at this time. A reasonable basis exists to assert that full discovery and compliance with Brady will now result in disclosure of numerous and substantial other examples of withheld or altered information and documents favorable to the petitioner.

will do a legal memo to create a body on the part of the Commonwealth

Although prior to trial petitioner received copies of over 100 witness statements, these were all without addresses, phone numbers or social security numbers. The large

as the request was there protective order?

number of statements turned over to the defense under circumstances in which the petitioner lacked meaningful funds for an investigator and scientific experts constituted a means to obscure the selective and biased nature of the concocted police investigation. There was a failure and refusal to comply with Brady at the most basic level. Where there was putative compliance, it was selective. The prosecution neither fully disclosed all witness statements, nor are the witness statements a fair, accurate and reliable account of what the witness actually saw and reported to the police. Exculpatory information was ignored. Some witnesses were threatened, others were promised favorable treatment in return for changing their statements. There was an outright failure to turn over reports which would have revealed material favorable to the defense.

is this
own
problem?
to discovery?

The following specific instances of Brady violations have been discovered and underscore the need for full discovery in preparation for an evidentiary hearing on petitioner's PCRA claims.

1. Subsequent to trial, petitioner learned that one of the individuals who signed police Investigation Interview Record(s) had been threatened, intimidated and coerced into signing a false statement in which he denied seeing the shooting. The purpose of the coercion was to suppress the information that this witness had seen someone other than petitioner shoot the police officer and run away and that the main prosecution witness, Cynthia White, was not on the scene until after the police arrived.

is this
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a discovery
claim instead
of a-d ev?

2. Prior to trial, petitioner received a copy of one statement by Veronica Jones taken on December 15, 1981 by Homicide Division Police officers Bennett and Harmon. That statement recites that Veronica Jones saw two men jog from the scene. There

were no other reports or notes of another interview with V. Jones disclosed to the petitioner. During her trial testimony it was learned for the first time that she was arrested and questioned for about five hours by Sixth District Police officers and reports of that interview were not disclosed to the petitioner. During that interview she was promised favorable police treatment if she would change her statement. Following that interview, at trial she recanted her prior testimony that she saw two black men fleeing the shooting. *not actually recantation* *not testimony, just a statement* *objection at trial?* *a-d ev.*

3. The petitioner received copies of three statements pre-trial by Robert Harkins, Jr. who said he witnessed the shooting of the police officer and could identify the shooter. However, he was not called to testify at trial. Mr. Harkins, a cab driver, was on parole at the time. Petitioner has since learned that Mr. Harkins was shown photographs to identify the man who shot Officer Faulkner and that he had been interviewed by police in his home. The petitioner received no reports, documents, statements or notes of any kind that Mr. Harkins had been shown photographs to identify the shooter. Nor did he receive any reports of a police interview which took place in his home. *IA claim?* *HARKINS*

4. The Commonwealth presented evidence of a confession purportedly made by petitioner in the hospital shortly after the shooting. On information and belief, the prosecution suppressed police logs, reports and memoranda as well as hospital security reports which demonstrate that the petitioner did not make any such statements at the hospital.

5. The key defense witness testified that he saw a black man run from the scene

immediately after hearing the shots fired. The police asked him to take a polygraph test which he passed. The defense was not informed that a polygraph was administered to that witness, nor was given any documents, reports or notes on the test questions and results.

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305B(1)(a)

6. The Philadelphia Police Department conducted intensive surveillance of petitioner since the time of his youth and maintained records on that surveillance. Despite their constant scrutiny, police found no basis for linking petitioner to any criminal activities during those years.

what sort of
Brady violation
is this?

These are only some of the examples of Brady violations by the Commonwealth in this case. Others will be addressed after full discovery is made.

Wherefore, the petitioner hereby makes this demand for discovery and inspection of the information and material listed below. Specific reports which are currently in petitioner's possession as indicated in the attached memo, Exh. 1, are excluded from this demand.

Brady Material

1. Any material evidence favorable to the petitioner which is relevant to guilt or punishment, and which is currently within the possession and/or control of the Commonwealth and/or its agents or which was in the possession and/or control of the Commonwealth at any time subsequent to events underlying this prosecution and conviction.

This, we
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over.

Record of Petitioner's Statements

2. a. Any and all written or otherwise recorded statement attributed to the

petitioner, whether or not the statement is inculpatory and including but not limited to biographical information or the substance of any oral statement attributed to the petitioner, which statement is in the possession and/or the control of the Commonwealth and/or its agents, and the identity of the person(s) to whom the statement was made. This demand, furthermore, is a request for all recorded versions of a single statement, including handwritten notations that record all or part of the contents or circumstances of such statements. The request therefore includes for example, not only formal police reports of such statements but also handwritten notes made by a Commonwealth agent regarding the statement pending subsequent inclusion of the statement in a formal police report. State the time, date and place of said contact with the defendant and provide the names and badge numbers of any police officers or agents or any other person(s) who were present during any portion of the contact being described.

This demand includes but is not limited, to all documents, reports, recordings and memoranda of contact with the petitioner including but not limited to any patrol log (75-158), incident report (75-48), offense report (75-49), offense report worksheet (75-49A), homicide report (75-52), arrest report (75-50) and activity sheets, prepared, signed by police officers Gary Wakshul (#7363), Stephen Trombetta (#7324), James Forbes (#9811), Robert Shoemaker (#9780), Garry Bell (#1217), and Inspector Alfonzo Giordano and any other police officer or hospital security guard or any other hospital personnel who had contact with petitioner at any time.

b. Any and all documents, reports or memoranda stating, recording or noting contact with the petitioner and which do not include a report of any statements made by

the petitioner, or which state that the petitioner made no statement, comment or admission. State the time, date and place of said contact with the defendant and provide the names and badge numbers of any police officers or agents or any other person(s) who were present during any portion of the contact being described. This demand includes but is not limited, to all documents, reports, recordings and memoranda of contact with the defendant, including but not limited to: patrol log (75-158), incident report (75-48), offense report (75-49), offense report worksheet (75-49A), homicide report (75-52), arrest report (75-50) and activity sheets, prepared, signed by police officers Gary Wakshul (#7363), Stephen Trombetta (#7324), James Forbes (#9811), Robert Shoemaker (#9780), Garry Bell (#1217), and Inspector Alfonzo Giordano and any other police officer or hospital security guard or any other hospital personnel who had contact with petitioner at any time.

Witness Statements, Generally

3. a. All written or otherwise recorded statements, whether signed or unsigned, of any and all witnesses, or the substance of any oral statement attributed to a witnesses which was or is in the possession and/or control of the Commonwealth and/or its agents, and the identity of the persons to whom the statement was made or who were present when the statement was made. This demand includes but is not limited to any maps, charts, drawings or other demonstrative evidence constructed by the witness alone or aided by another, including a commonwealth agent. Petitioner does not have in his possession or control a copy of any statements of the following named witnesses who appear on a March 1, 1982 letter from the District Attorney's Office to Anthony E.

Eye witness only, no discrediting.

What standard governed all those that were already turned over?

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Jackson, attached hereto as Exh. 2: Frank Allen, Beulah Campbell, Sharon Cook, Delores Fox, Pasquale Marcovecchio, Anthony Merrone, Robert Schmidt, William Stapleton, Reginald Thompson, Mark Turnock, Otis Williams, Michael Burns (#6203), John Kidwell (#6363), William Maahs (#3689), Edward Markowski (#9547), Brian McDonnell (#6208), Brian Shu (#3260), Joseph Schuck (#7368). Nor does petitioner have in his possession or control the December 9, 1981 Investigation Interview Record of Gary Wakshul (#7363).

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b. All tape recordings made of statements or conversations of witnesses, whether or not they testified at trial as well as the name or names of the individual(s) who made the recording and the names of all person(s) present at any time during the recording.

c. All notes or memoranda, handwritten or typed, or taped recordings by police officers or other investigating officers of their conversations with persons pertaining to the investigation into this matter and the names of all other persons present when the conversations or other events recorded in the notes took place.

d. The names and addresses of all witnesses to, or who have knowledge of, the crime or the events leading to the commission thereof.

e. Copy of the all the records, memorandum, and notes, including but not limited to: incident reports (75-48), homicide reports (75-52), arrest reports (75-50), offense report (75-49), activity sheets, patrol logs (75-158), radio card (75-163), JAD record card (75-163), investigator's activity log (75-232), investigator's aid to interview (75-229), investigators interview report (75-483), chronology of interrogation and custody (75-485) which were written, prepared, or otherwise used by officers investigating the crime

involved in the above-entitled action or any other crimes investigated by law enforcement as a result of the petitioner's arrest.

f. Names and addresses of all persons interviewed by the police, the District Attorney's office, its investigators or agents, or any other law enforcement agency known to the District Attorney or his representative in relation to this case and the names and addresses of all persons present during any portion of the interview.

g. Any witnesses, including their statements, or any physical evidence that might reasonably be anticipated being used by the Commonwealth to rebut any defense evidence or argument, whether at trial or at sentencing. Any information that might cause the defense to give pause as to the presentation of any conceivable defense witness or strategy. This request is made pursuant to Commonwealth v. Ulen, ___ Pa. ___, 650 A.2d 416 (1994) which mandates such disclosure. *rebuttal problem?*

h. All evidence and/or witnesses tending to support any of the mitigating circumstances set forth in 42 PA CSA sec. 9711(e) *How could we have this?*

Documents Evidencing Promises and/or Threats to Witnesses

4.a. The names, addresses, alias, and prior criminal record (including FBI extract) of any and all potential witnesses, any criminal charges pending against said witnesses, or whether any of the witnesses were arrested for any criminal charges prior to July 3, 1982, the subject of any investigation for criminal charges, the target of any grand jury investigation, subpoenaed to testify before any grand jury, or on parole or probation at any time during the period from December 9, 1981 to July 3, 1982. *2018/1/26 Impeachment*

b. Any promise and/or inducement or representation of any kind made to any

potential witness and/or the witness' relations, friends or associates by any Commonwealth agent to encourage or induce a witness to assist the commonwealth in its investigation and or prosecution, or to induce a potential witness to testify for the prosecution or to modify their statement or testimony in any way. Provide the name and badge number of all police officers and agents who participated in any way in interviews or discussions with witnesses or who had any knowledge of said promise, inducement or representation.

c. Any warning, threat, promise or representation of any kind made to any potential witness and/or the witness' relations, friends or associates by any Commonwealth agent to dissuade a witness from assisting the defense in any way, or to induce or coerce a potential witness into modifying or changing his statement or testimony in any way. Provide the name and badge number of all police officers and agents who participated in any way in interviews or discussions with witnesses or who had any knowledge of said warning, threat, promise or representation.

d. Any information relevant to the impeachment of any witness that the prosecution called at the trial or intends at the upcoming PCRA evidentiary hearing, including any threats, promises, inducements, offers of reward or immunity, affirmative representations made or implied and any record of convictions, or of pending charged, probation, or parole.

This request is meant to apply to any police informants involved at any level in this case and any people interviewed and contacted by the police, or an investigative or prosecuting agent relative to this matter whether or not the Commonwealth obtained a

statement from the person or whether or not the person was called or testified as a witness.

This request applies to all documents, memorandum, notes, tapes of any promise, threat, inducement or representation.

State whether any witness and/or witness' relations, friends or associates received any favorable treatment by any governmental agency as a result of the witness' testimony at petitioner's trial or as a result of the fact that he did not testify at petitioner's trial, and provide documents evidencing the same; and any memorandum, communication, whether written or oral, by the Commonwealth or its agents to any governmental or private agency concerning witness;

e. State all contact, whether in person, in writing, telephonic or otherwise between the prosecution and any witness (as described above) subsequent to July 3, 1982 and down to the present, provide specifically the date, time and place of said contact and provide a copy of all documents, memorandum, tapes, or notes of any such contact or communication. Provide the names of all those who participated in said contacts and all those with knowledge of said contacts.

Photo array or other identification procedures which did or did not result in identifying petitioner as the shooter

5. Through motion, shortly after petitioner's arrest, the Commonwealth obtained permission to photograph petitioner for the purpose of identification procedures.

However at trial none of the prosecution witnesses reported that they had undergone a photo identification procedure.

Circumstances and results of any identification procedure that was conducted or that occurred in connection with this case or in the course of investigation of this case. As used herein, the term "identification procedure" includes any form of identification procedure conducted by the Commonwealth or its agents, as well as any identification made or obtained by "inadvertent" display of the defendant or other person to the identifying witness or inadvertent encounter between the petitioner or other person and the identifying witness. This demand includes but is not limited to the following:

- a) identification procedures involving the petitioner, petitioner's brother, and any other person, including suspects, whether or not charged with any offense;
- b) identification by voice or photograph, as well as in person identification procedures;
- c) all photographs used in a photographic identification procedure, and the name, police photo number, and the criminal record of all the "fillers";
- d) the identity of the person(s) conducting the identification procedure and all persons present at any time at the identification procedure; provide the badge number of all police officers;
- e) the results of any identification procedure, including the witness' positive or qualified identification of the petitioner or petitioner's brother, the witness' failure to identify the defendant or other prime suspect;
- f) Examination of all photographs, video tapes, motion pictures, composites or likenesses shown to witnesses and prospective witnesses in this case for the purpose of establishing the identity of suspects in the crime charged against the defendant and all

reports concerning the display of such;

g) Copies of all photographs, and film negatives, taken of the petitioner and petitioner's brother, William Cook, by the police, the prosecution or their agents from the period December 9, 1981 until July 3, 1982.

Scientific Tests and Physical Evidence

6. a. Results of polygraph test performed on any witness and all written or otherwise recorded notes, memos or reports of said polygraph examinations, including but not limited to: the name and date of each polygraph, name of the person(s) administering the test and the names of all those present at any time during the examination or who interviewed the examinee immediately after the examination. Provide the names of all persons who were provided information concerning the results of the examination.

b. Results or reports, including rough notes, memoranda or tape recordings, of any or all laboratory or scientific tests, including but not limited to ballistics and firearms reports, expert opinions concerning any testing or examination of physical evidence connected with the investigation of this case. Provide the names of all individuals present when said tests were performed and the names of all persons who were provided information concerning the results of the tests or examination of physical evidence.

c. Results or reports, memoranda, including rough notes, regarding the use of the neutron activation test and/or any other gun residue tests by the police and their agents for the three year period immediately preceding petitioner's arrest, including but not limited to, any formal or informal police guidelines as to when the test should be used;

numbers, statistics or other description of its use or non-use; cost of purchasing each kit and the name and badge number of the police department or other personnel responsible for the purchase, maintenance and deployment of these kits by the Mobile Crime Unit. Provide a copy of such a kit.

d. Examination of all physical evidence obtained during the investigation, including but not limited to, physical examination of the weapons and bullets and bullet fragments found at the scene or removed from the body of decedent and petitioner.

305B(1)(f)

e. All tangible, physical or demonstrative objects of evidence, including but not limited to, documents, photographs, or clothing, as well as any property receipts regarding such evidence.

f. All police reports, notes, property receipts, memoranda regarding the recovery of the weapons and the bullets from the scene and the names and badge numbers of all the police officers who participated in any way in the investigation and or search of the area and the names of all police officers or prosecutors who received information regarding the results of said investigation or search. This demand includes, but is not limited to, all photographs and transparencies, slides, diagrams, motion pictures, video recordings, drawings, taken or prepared at or near the time of the offense, in the possession of any police department, the District Attorney, or any other person or agency and available to the prosecution, of the scene of the alleged offense.

g. Copy of any crime scene analysis and measurements and examination of all photographs, contact sheets, transparencies, slides, diagrams, motion pictures and video tapes taken or prepared at or near the time of the offense, in the possession of any

police department, the District Attorney, or any person or agency and available to the prosecution of the scene of the alleged offense.

h. A complete list of manufacturers and models of each and every weapon which is capable of firing the bullets alleged to have been found in the body of the decedent and in the area surrounding the incident.

i. A copy of all police radio communication tapes including but not limited to any communication from or to police officer Faulkner, to or from any of the police who arrived on the scene and to or from any vehicle transporting petitioner and the decedent to the hospital and any reports, notes or memoranda reducing to writing the content of said tapes.

Medical Records

7. a. Results or reports of medical examinations of the decedent, including but not limited to the entire hospital record on decedent, including particulars of any operation or other medical procedure performed; names and addresses of all hospital staff who treated or assisted in the treatment of decedent, and the names of addresses of all other person(s) present while said treatment took place.

b. All reports, memoranda, notes, including rough notes, regarding the preparation of the Findings of the Medical Examiner, dated 12/9/81, and the names and addresses of all police and hospital personnel who were present at any time during the preparation of said report.

c. Copies of all reports, memoranda, notes, including rough notes taken or transcribed of the autopsy, including autopsy slides, photographs and M.E. tapes as the

autopsy was performed.

d. Results of reports of medical treatment and examinations of the petitioner, including but not limited to the entire hospital record on petitioner.

equal access?

Police Reports, Generally

8. a. Copy of the all the records, memoranda, and notes, including but not limited to: homicide daily case summary sheet, incident reports (75-48), homicide reports (75-52), arrest reports (75-50), offense reports (75-49), activity sheets, patrol logs (75-158), radio card (75-163), JAD record card (75-163), investigator's activity log (75-232), investigator's aid to interview (75-229), investigators interview report (75-483), chronology of interrogation and custody (75-485) which were written, prepared, or otherwise used by officers investigating the crime involved in the above-entitled action or whom were present at the crime scene or at Jefferson Hospital at any time from 3:30 AM December 9, 1981 until July 3, 1982.

any record

b. All records, memorandum, notes, interviews, written or recorded, dictated or executed by or under the direction of Det. William Thomas (#744) regarding the investigation and/or prosecution of this case.

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c. Copy of the Roundhouse visitor's log for December 9 and 10, 1981 and any notes, memoranda, or writing regarding any visitor to the Roundhouse who is in any way whatsoever connected to or associated with this case.

not our control. Too vague.

d. A copy of the Location and Complaint files regarding any and all calls concerning this crime.

e. All reports, notes, memoranda, writing of any sort contained in any police

report or form or separate document or tape recording of anyone reporting that they saw a person or persons running from the scene of the incident on December 9, 1981 on or about 3:50 AM or shortly thereafter.

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f. All reports, notes, memoranda, including but not limited to Complaint or Incident reports, Patrol logs and Police Activity Sheets pertaining to Bill Cook, Ken Freeman and Ron Freeman, the owners and/or operators of a vendor stand located at 16th and Chestnut Streets from the period January 1-December 30, 1981.

reference
not covered
by 305

g. All reports, notes, memoranda concerning police officer Gary Wakshul's (#7363) work and vacation record for the period June 1-July 15 1982, including but not limited to, any and all information concerning days off and vacation schedule, providing any and all written records of requests and approvals of time off during this period and any written or taped communication between Officer Wakshul, other police officers and Commonwealth agents concerning his days off duty and/or sick and/or vacation during that period of time.

police
dept.

Police Surveillance Records

9. Petitioner received 700 pages of FBI surveillance files which establish that the Philadelphia police were actively engaged in political surveillance of him and attempts to charge him with criminal offenses from at least 1969, when he was fifteen years old until at least 1974. Numerous police officers were involved in this work and would have been familiar with and biased against petitioner. It is public knowledge that former Police Commissioner and Mayor Frank Rizzo maintained extensive surveillance files on thousands of Philadelphia citizens. This demand is for all Philadelphia police files which

see police dept.

were maintained on petitioner or which name or mention him.

a. State the department or units of the Philadelphia Police Department which were engaged in political surveillance or the recording of information and/or the maintenance of any sort of files on citizens for any reason other than criminal arrest and/or conviction from the period of 1969 through 1981. State whether there was any unit or department of the Philadelphia Police Department which specifically reported on activities and persons active in the black community.

police investigation
utterly irrelevant
to this case

b. Provide the names and badge numbers of all Philadelphia police officers assigned to the Civil Disobedience and/or Intelligence Units at any time during the period of 1968-1982 and state which police unit or district each police officer was assigned during the period of Dec 1981-July 3, 1982.

police investigation
utterly irrelevant

c. Provide the name and badge number of any and all Philadelphia police officers who participated in or witnessed the FBI-led raids on Black Panther Party offices and Webb's Bar on October 6, 1969 and on the Black Panther Party offices on August 31, 1970, or ordered Philadelphia police officers to participate in or be present at said raids.

police investigation
utterly irrelevant

d. State the names and badge numbers of any of the police officers who worked in any capacity on investigating petitioner in this case who were at any time assigned to the Civil Disobedience or Intelligence Units.

police investigation
utterly irrelevant

e. Copies of all files on or containing information on Mumia Abu-Jamal, aka Wesley Cook, including but not limited to all written or otherwise recorded reports, memoranda, notes, documents, information, photographs, newspaper clippings, eavesdropping tapes which were compiled, maintained or otherwise collected or used by

same as (a)
under what authority?

Philadelphia Police Department or its agents, including but not limited to the Civil Disobedience Unit and the Intelligence Unit, from 1968 through the present. If said files are no longer in the control or custody of the Philadelphia Police Department, or any other Commonwealth office or agent, state the location of said files and the date they were removed from Commonwealth custody and control.

f. State whether former Police Commissioner and Mayor Frank Rizzo or any of his agents maintained any identifiable files, documents, records on Philadelphia media whether print, radio or television journalists. State whether said files contained any information, records, notes, documents, tapes on or concerning Mumia Abu-Jamal and provide copies of all files, memoranda, notes, newsclips, etc. concerning or naming petitioner.

h. State whether the Philadelphia Police Department maintains surveillance and or intelligence files on the MOVE organization and/or persons believed to be MOVE supporters. Provide copies of any and all such files, documents, records, notes, memoranda, newsclippings, tapes about or which include any reference to petitioner.

Records of Police Corruption

10. a. State the name and badge numbers of all Philadelphia police officers arrested and indicted, or named as an unindicted co-conspirator or as an informant, in the federal investigation into corruption in the Philadelphia Police Department from January 1980 through 1986, specifically those police officers who were also involved in any way or supervised in any way those involved in the investigation and prosecution of petitioner.

b. Provide a copy of the indictment charging any police officer with the commission of a crime or otherwise naming a police officer as an unindicted co-conspirator or informant, who was involved in the investigation and prosecution of the petitioner, stating the outcome of the proceeding, including the sentence, if any imposed on each police officer.

c. Provide a copy of reports, memoranda, notes, tapes concerning the 1980-1886 federal investigation and prosecution of police officers assigned to the 6th District on corruption charges, including but not limited to those police officers involved in the investigation and prosecution of petitioner.

d. Provide the names and addressees of any police or civilian informants in investigation, who also had any connection to petitioners arrest and prosecution, whether or not they testified at trial in the above referenced federal prosecutions.

Police Misconduct Personnel Files

11. Copies of the following materials regarding the decedent Daniel Faulkner and the police officers, including but not limited to the officers who questioned witnesses Cynthia White, Veronica Jones, Robert Chobert, Robert Harkins, Dessie Hightower, Michael Scaplon, William Singletary, involved in the investigation and prosecution of petitioner:

a. The name, date of birth or approximate age, address and telephone number of each person who has filed a complaint with the Department for any of the acts of misconduct checked below:

(1) unnecessary aggressive behavior;

- (2) violence and/or attempted violence;
- (3) excessive force and/or attempted excessive force;
- (4) prejudice based on race, ethnicity or national origin;
- (5) prejudice or bias based on sex or sexual orientation;
- (6) false arrest;
- (7) illegal search or seizure;
- (8) fabrication of charges;
- (9) fabrication of evidence;
- (10) false or misleading police reports;
- (11) obtaining statements from suspects or witnesses by means of coercion, threats or force;
- (12) obtaining statements from suspects or witnesses by means of promises of leniency, special treatment or release from custody;
- (13) obtaining statements from suspects in violation of their Miranda rights;
- (14) other acts of dishonesty or improper tactics no matter how catalogued by the Police Department (such as conduct unbecoming an officer, neglect of duty and miscellaneous).

This request does not include complaints concerning conduct which occurred more than five years before the date of the incident in the above-entitled case, but it does include complaints concerning conduct which occurred after that date.

b. All statements, oral or written, by each person who has brought a complaint

described in item a. above.

c. The name, date of birth or approximate age, address and telephone number of every witness to the acts of misconduct described in item a. above, whether or not such witness was actually interviewed by the Department, its investigators or other personnel during its investigation in to the complaint described in item a. above, and all other persons interviewed by the department, its investigators or other personnel during its investigation into the complaints described in item a.

d. All statements, written or oral, by each person described in item c. above. This includes statements given by the above referenced officers.

e. All investigative reports and all other records, reports, notes, memoranda and any other writings in possession of the department as result of its investigation into the complaint described in item a. above.

f. Disclosure of the fact whether discipline was imposed on the above named officer(s) for any of the acts described in item a. above.

Miscellaneous

12. a. The name, address and race of each member of the jury venire questioned to sit on the jury in petitioner's case.

b. The voting districts from which juror questionnaire forms were mailed for the jury venire questioned to sit in petitioner's case.

13. a. All records, reports, documents, notes and memoranda concerning the establishment and functioning of the Philadelphia County Homicide Court, including but not limited to information on the criteria for the selection of judges who sit on the

no jury
was
waived.
juror
questionnaire
forms
(pre-qualified
jurors)

homicide court, a record of the judges which have sat on that court (and for how long) over the period of the last twenty years, the racial composition of judges who sat on the homicide court in the months of June and July 1982.

14. Copies of the pre-trial motions filed by the defense in the above-captioned case and the answers filed by the prosecution.

Respectfully submitted,

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Attorneys for Petitioner Mumia Abu-Jamal

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA

: JANUARY TERM, 1982
: BILL NO. 1357

v.

:

MUMIA ABU-JAMAL
a/k/a Wesley Cook

:
: (PCRA)

ORDER

AND NOW, this day of , 1995, on
consideration of the Commonwealth's Response to Petitioner's
Motion for Discovery, the above-captioned Motion for Discovery is
dismissed.

BY THE COURT:

J.

III. ANSWER

The factual allegations and assertions made by petitioner are DENIED.

WHEREFORE, the Commonwealth requests that this court dismiss petitioner's Motion for Discovery.

Respectfully submitted,



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Chief, Motions Unit
E. KINNEY ZALESNE
Assistant District Attorney
HUGH J. BURNS, JR.
Assistant District Attorney
CATHERINE MARSHALL
Chief, Appeals Unit
RONALD EISENBERG,
Deputy, Law Division

of Common Pleas, Criminal Division, Homicide Section. See supra at paragraph 6.c. In any event, challenges to the makeup of the Homicide Program have been repeatedly rejected. See Commonwealth v. Moore, 534 Pa. 527, 633 A.2d 1119 (1993), cert. denied, ___ U.S. ___, 115 S. Ct. 908; Commonwealth v. Green, 58 Pa. 226, 232 (1868).¹¹

14. Petitioner has equal access to any pleadings filed in this case and is welcome to obtain them, just as the Commonwealth would, through the Clerk of Quarter Sessions File. See supra at paragraph 6.c.

¹¹See also Commonwealth v. Gibson, 389 Pa. Super. 518, 567 A.2d 724 (1989) (upholding constitutionality of Career Criminal program which, like Homicide Program, designated judges to try specific types of offenders); Commonwealth v. Barnes, 388 Pa. Super. 327, 565 A.2d 777 (1989) (same), appeal denied, 528 Pa. 620, 597 A.2d 1150 (1991); Commonwealth v. Simmons, 388 Pa. Super. 271, 565 A.2d 481 (1989) (same), appeal denied, 525 Pa. 598, 575 A.2d 564 (1990).

Records of Police Corruption

10.a. - 10.d. See supra at paragraph 9.a. - 9.h.

Police Misconduct Personnel Files

11.a. - 11.f. See supra at paragraph 9.a. - 9.h.

Miscellaneous

12.a. The name, address, and race of each member of the jury venire questioned, assuming such information exists, is equally accessible by petitioner.

12.b. Petitioner has equal access to voting district information. See supra at paragraph 6.c. See also Commonwealth v. Galloway, 238 Pa. Super. 69, 352 A.2d 518 (1975) (defendant not entitled to examine prosecutor's report containing jury selection information); Commonwealth v. Showalter, 231 Pa. Super. 278, 332 A.2d 456 (1974) (refusal of defendant's request for jury information list used by prosecutor in jury selection was proper since such a list was not within the realm of discovery).

13.a. Petitioner has equal access to information on the criteria for selection of judges and the history of the Court

¹⁰ (...continued)
have been subject to pre-trial disclosure. See Commonwealth v. Smythe, 245 Pa. Super. 75, 369 A.2d 300 (1976) (defendant not entitled to examine written statements of Commonwealth witnesses taken during investigation by FBI into civil rights claim instituted by alleged victim).

R. Crim. P. 305B(1)(a). See, e.g., Statement of Veronica Jones, disclosed on March 1, 1982, per Letter to Anthony E. Jackson, Esq., supra, at 2 and statements of Tanya Thompson and Charlotte Thompson, disclosed June 28, 1982, per Letter to Anthony E. Jackson, attached as Exhibit E.

8.f. Even pre-trial, information concerning vendor operators who worked five blocks from the murder, for the year preceding it, would have been irrelevant and therefore not covered by any rule governing pre-trial discovery. Petitioner utterly fails to address its relevance now. Moreover, defendant is equally capable of gathering this information himself if he deems it important. Discovery production does not, even by its broadest definition, require the Commonwealth to investigate and collect any and all types of information, completely immaterial to its prosecution, simply because petitioner speculates it might be helpful to him. Hence, no discovery is warranted.

8.g. Police personnel records are not in the exclusive control of the District Attorney's Office. Petitioner has equal access to them. See supra at paragraph 6.c.

Police Surveillance Records

9.a. - 9.h. Police department records are not in the exclusive control of the District Attorney's Office. Petitioner has equal access to them. See supra at paragraph 6.c.¹⁰

¹⁰Moreover, the information requested in paragraph 9 is utterly irrelevant to petitioner's trial and therefore would not
(continued...)

7.c. Notes taken in preparation of the Medical Examiner's Report are outside the scope of discovery rules, even pre-trial.

7.d. Petitioner's medical records are equally accessible by him from the hospital where he was treated. See supra at paragraph 6.c.

Police Reports, Generally

8.a. Disclosure of police reports is governed by Pa. R. Crim. P. 305B(2)(a). The reports subject to disclosure under that subsection were properly disclosed. See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra at 2.⁹

8.b. See supra at paragraph 8.a.

8.c. Roundhouse visitor logs were not and are not in the exclusive control of the District Attorney's Office. Petitioner had and has equal access to them. See supra at paragraph 6.c.

8.d. "Location and Complaint files" are not identified. To the extent they are in the possession of the Philadelphia Police Department, they may be sought there. See supra at paragraph 6.c.

8.e. Any evidence of possible other perpetrators of this crime was disclosed to petitioner pre-trial pursuant to Pa.

⁹Even if this were a civil action, petitioner's request for "all notes . . . written . . . or otherwise used by officers . . . whom (sic) were present . . . at Jefferson Hospital at any time from 3:30 AM December 9, 1981 until July 3, 1982" would be overbroad and nearly impossible to address.

6.g. Any crime scene analysis that is now in the possession of any agency other than the District Attorney's Office may be sought from that agency. The Commonwealth has already provided all information in its possession. See supra at paragraph 6.c. See also supra at paragraph 6.f.

6.h. Surely petitioner has equal access to the gun manufacturing information requested in this paragraph. See supra at paragraph 6.c. This request is so inappropriate that it merits sanctions.

6.i. All relevant tapes were made available to petitioner prior to trial. See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra at 2. In particular, the "Radio Tape Transmittal J & Central Band" or police radio transcript for December 9, 1981, was disclosed to petitioner on March 19, 1982. See Letter to Anthony E. Jackson, Esq., of March 19, 1982, attached as Exhibit A. No further discovery is warranted.

Medical Records

7.a. The post-mortem report of the victim was disclosed to petitioner prior to trial. See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra at 2; see also Letter to Anthony Jackson, Esq., of March 19, 1982, attached as Exhibit A.

7.b. The information requested in this paragraph duplicates that requested in paragraph 7.a.

and defendant. See Commonwealth v. Gelormo, 327 Pa. Super. 219, 475 A.2d 765 (1984); Commonwealth v. Hussmann, 335 Pa. Super. 603, 485 A.2d 58 (1984) (citing cases). It is surely not required to do so now. See also Commonwealth v. Jones, 285 Pa. Super. 112, 426 A.2d 1167 (1981) (even pre-trial defense has no right to gun residue test results absent express request). Despite defendant's apparent belief, the District Attorney's Office is not the repository of all information in which he may be interested. The Commonwealth certainly has no duty to conduct petitioner's investigation for him or ferret out all the superfluous and extraneous information he desires.

6.d and 6.e. Physical evidence was made available for petitioner's review pursuant to Pa. R. Crim. P. 305B(1)(f). See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra at 2. See also Commonwealth v. Fox, 422 Pa. Super. 224, 619 A.2d 327, 334-35 (noting limits on Commonwealth's obligation to disclose physical evidence), appeal denied, 535 Pa. 659, 634 A.2d 222 (1993).

6.f. The information requested in this paragraph exceeds the scope of even pre-trial discovery. In any event, a prepared diagram of the scene, as well as a scene sketch including diagrams and photographs, was disclosed to petitioner as part of informal discovery and Judge Ribner's order. See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra, at 2.

exception of Robert Harkins, discussed earlier, any persons who allegedly were shown a photo array. Moreover, he has failed to identify those officers or individuals allegedly involved in conducting the arrays.

Scientific Tests and Physical Evidence

6.a. Even pre-trial, polygraph results are discoverable concerning a defendant only. See Pa. R. Crim. P. 305B(1)(e). Results of other witnesses' tests are surely not discoverable now.

6.b. Prior to trial, the results of ballistics tests performed in the investigation of this case were disclosed to petitioner. See Letter to Anthony E. Jackson, Esquire, of March 1, 1982, attached as Exhibit 2 to petitioner's Motion. Pa. R. Crim. P. 305B(1)(e). A chemical lab report was also disclosed, id., as was FBI Lab Report # 11211018 concerning serum analysis. See Letter to Anthony Jackson, Esq., of March 19, 1982, attached as Exhibit A. No further disclosure is warranted.

6.c. Reports or memoranda concerning neutron activation or gun residue tests conducted by the police during the three years preceding petitioner's arrest may be sought from the police department. Likewise, petitioner should request from them any statistics, records, guidelines or other miscellaneous information or paraphernalia he seeks. Even pre-trial, the Commonwealth is not obligated under Rule 305 to provide information that is equally available to both the Commonwealth

hearing has been granted. Moreover, there is no authority for such discovery under the PCRA. See New PCRA Practice and Procedure Outline V. A. 1 and 2 (effective July 1, 1993) (imposing no such obligation on the Commonwealth).

4.e. Post-trial "contact" between the prosecution and "any witness" is not discoverable except to the extent that it constitutes Brady material subject to disclosure in the interest of fairness. See supra at 2-5. Petitioner makes no specific allegation as to any such "contact"; he is simply fishing, hoping to create delay. Absent specific information, the Commonwealth cannot confirm, deny or defend this purported "contact" with its witnesses post-trial. In any event, the Commonwealth is not aware of, nor has petitioner cited, any prohibition regarding such "contact."

Photo Array or Other Identification Procedures Which (sic) Did or Did Not Result in Identifying Petitioner as the Shooter

5.a) - g) To the extent there was photographic evidence in this case, it was made available to petitioner prior to trial. See Letter to Anthony E. Jackson, Esq., of March 1, 1982, supra at 14, page 2. See also Letter to Anthony Jackson, Esq., of March 19, 1982, attached as Exhibit A (disclosing seven photographs of petitioner to him). The Commonwealth has no information that photo arrays were shown to any witnesses and petitioner's request lacks specificity permitting further investigation. Petitioner has failed to identify, with the

4.c. Petitioner's request is overbroad and fails to identify a specific incident pertaining to a specific witness or person. Petitioner's request as stated could potentially include every communication with a potential witness, both proper and improper. The Commonwealth possesses no information that any officers or agents of the government improperly persuaded witnesses not to cooperate with or assist the defense or to alter their version of events.

4.d. With regard to witnesses presented at trial, this request duplicates the information sought in paragraph 4.a. To the extent petitioner seeks information concerning confidential police informants, such information (even if it exists) would not be discoverable pre-trial. See Commonwealth v. Iannaccio, 505 Pa. 414, 480 A.2d 966, 970-72 (1984) (defendant seeking disclosure of identity of confidential informant must show that production is material to defense; court must then weigh defendant's needs against public interest in protecting flow of information), cert. denied, 474 U.S. 830, 106 S. Ct. 96 (1985). See also Commonwealth v. Jennings, 428 Pa. Super. 297, 630 A.2d 1257, 1262-63 (1993); Commonwealth v. Twyman, 425 Pa. Super. 198, 624 A.2d 636, 638 (1993). Now, 13 years post-trial, absent any such showing, petitioner surely has no right to information concerning confidential informants, assuming any such persons actually existed.

With regard to witnesses the Commonwealth intends to present at the "upcoming PCRA evidentiary hearing," no such

could have brought his PCRA claims. Now is hardly the time to act as though petitioner has not yet been tried.

3.h. Not surprisingly, petitioner's request for information "tending to support any of the mitigating circumstances set forth in 42 Pa. C.S.A. sec. 9711(e)" is also unsupported. Motion at 9. Petitioner cites no authority for the extraordinary proposition that the Commonwealth must collect defense evidence tending to show mitigation. Apart from the absence of a criminal record, which was obviously "disclosed," mitigating evidence was surely in the hands of petitioner, not the Commonwealth.

Documents Evidencing Promises and/or Threats to Witnesses

4.a. Petitioner here presumably refers to information concerning potential Commonwealth witnesses, as opposed to defense witnesses. Impeachment information as to those witnesses was disclosed prior to trial pursuant to Pa. R. Crim. P.

305B(1)(a). See also Commonwealth v. Moose, 529 Pa. 218, 602 A.2d 1265 (1992); Commonwealth v. French, 531 Pa. 42, 611 A.2d 175 (1992); Commonwealth v. Shands, 338 Pa. Super. 296, 487 A.2d 973 (1985). No such additional information has come into the Commonwealth's possession since the conclusion of trial. Giglio, supra. Therefore, no further discovery is warranted.

4.b. This request duplicates the information sought in paragraph 4.a.

post-trial proceedings). Changes in the law may only be applied retroactively "where the issue in question is properly preserved at all stages of adjudication up to and including any direct appeal." Commonwealth v. Cabeza, 503 Pa. 228, 469 A.2d 146, 148 (1983). Here, it clearly was not.⁸

In any event, both Rule 305 and the court in Ulen interpreting it concern themselves with pre-trial proceedings. By definition, those proceedings occur before the trial takes place. It is therefore sensible, at that time, to require the disclosure of information that the Commonwealth "contemplates" or "anticipates" using in rebuttal of the defense's case. In the post-conviction stage, however, there is no longer any such logic. The trial has occurred. Petitioner offers no example of any information used on the Commonwealth's limited rebuttal that he did not receive. He makes no specific allegation of error or prejudice. He simply spews forth requests as though the force of his desire for a new trial has itself brought about that result and he is now preparing to rebut the Commonwealth's case. The Commonwealth's case is long over. Judgment of petitioner has long since been affirmed and years have passed since petitioner

⁸More precisely, in the context of post-conviction relief, new rules of law which are given retroactive effect (this one was not) may not be applied unless the new decision was handed down during the pendency of the petitioner's direct appeal and the issue was properly preserved there, or is non-waivable. Commonwealth v. Gillespie, 512 Pa. 349, 516 A.2d 1180, 1183 (1986). See also Commonwealth v. Harper, 512 Pa. 155, 516 A.2d 319 (1986); Commonwealth v. Galloway, 433 Pa. Super. 222, 640 A.2d 454, 456 (1994).

3.e. The request in this paragraph duplicates the request in paragraph 2.a. and 2.b. Its last phrase, concerning a request for records involved in "any other crimes investigated by law enforcement as a result of the petitioner's arrest," is overbroad, over-vague, and indicative of petitioner's purely dilatory tactics. Such a request would be indefensible even if this were large-scale civil litigation. Even to suggest that the Commonwealth must produce investigative records in cases to which even petitioner himself cannot draw a tentative link is to abuse the resources of this court. Petitioner's strategy is sanctionable.

3.f. The Commonwealth was not required pre-trial, nor is it required now, to hand over to petitioner its file. See supra at paragraph 3 b. See also Santiago, supra at 1069-70.⁷ Any exculpatory information gleaned during the Commonwealth's interviews was disclosed. No other discovery was or is warranted. The brazenness of petitioner's request should not be mistaken for authority.

3.g. Commonwealth v. Ulen, ___ Pa. ___, 650 A.2d 416 (1994), on which petitioner bases this request, is a new case that obviously did not govern pre-trial proceedings in 1982. Nor does its holding apply retroactively to this case (much less in

⁷"The rationale underlying Brady is not to supply a defendant with all the evidence in the Government's possession which might conceivably assist the preparation of his defense, but to assure that the defendant will not be denied access to exculpatory evidence only known to the Government" (citations omitted) (emphasis in original).

1982, supra at 2 ("You may view photos and physical evidence and listen to any relevant tapes by appointment.")

No additional disclosure is warranted, notwithstanding the intensity of petitioner's desire to comb through Commonwealth files. As the Supreme Court has held:

The law is clear [even pre-trial]. . . that a 'prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial. . . . A defendant's right to discover exculpatory evidence does not include the unsupervised authority to search through the Commonwealth's files. Although the eye of an advocate may be helpful to a defendant in ferreting out information, this Court has never held -- even in the absence of a statute restricting disclosure -- that a defendant alone may make the determination as to the materiality of the information. Settled practice is to the contrary."

Santiago, supra at 1069 (citations omitted).

3.c. The request in this paragraph duplicates the requests in paragraphs 2.a. and 3.b.

3.d. This extraordinary request for the names and addresses of "all witnesses . . . who have knowledge of . . . the crime or the events leading to the commission thereof" is typical of petitioner's arrogance in this motion. Motion at 8. The Commonwealth has no obligation now beyond Brady. See supra at 2-5. Even pre-trial, petitioner could not have demanded that the Commonwealth provide information and documents beyond the scope of pre-trial rules. This overbroad request approaches bad faith and should be denied.

to Anthony E. Jackson, Esq., of February 23, 1982, attached as Exhibit F.

2.b. Those documents noting contact with petitioner wherein the petitioner did not speak or where no statement was recorded were included in the file turned over pursuant to Judge Ribner's order. See supra at paragraph 2.a.

Witness Statements, Generally

3.a. All witness statements that constituted exculpatory evidence under Pa. R. Crim. P. 305B(1)(a) were disclosed to petitioner prior to trial, either in informal discovery or pursuant to Judge Ribner's order.⁶

3.b. All tape recordings of witnesses that were either exculpatory or favorable to petitioner were made available prior to trial. See Letter to Anthony E. Jackson, Esq., of March 1,

⁶Under Rule 305, the only other witness statements that are even arguably discoverable are those of eyewitnesses, and their disclosure is a matter of court discretion. See Pa. R. Crim. P. 305B(2); Commonwealth v. Buehl, 510 Pa. 363, 508 A.2d 1167 (1986) (even pre-trial, defendant is not entitled to statements of Commonwealth witnesses who were not "eyewitnesses"), cert. denied, 488 U.S. 871, 109 S. Ct. 187 (1988); Commonwealth v. Dietterick, 429 Pa. Super. 180, 631 A.2d 1347, 1351 (1993) ("The Rules of Criminal Procedure require only that the Commonwealth disclose the identity of eyewitnesses"), appeal denied, 538 Pa. 608, 645 A.2d 1312 (1994).

In this case, the Commonwealth made available to petitioner even more statements than required. See Letter to Anthony E. Jackson, Esq., attached as Exhibit 2 to Petitioner's Motion. Petitioner concedes as much in the latter sentences of this paragraph, in which he re-requests statements that he received prior to trial but has since misplaced. See Motion at 7-8.

key prosecution witness. Giglio, supra. Therefore, no additional discovery is warranted.

Record of Petitioner's Statements

2.a. All statements of the petitioner were duly disclosed to petitioner pre-trial pursuant to Pa. R. Crim. P. 305B(1)(b). Moreover, four incident reports (75-48s), two offense reports (75-49s), and the statements of Officers Wakshul, Trombetta, Forbes, Shoemaker, and Bell and Inspector Giordano, as well as those of 15 other officers and multiple hospital personnel, were provided on March 1, 1982. See Letter to Anthony Jackson, Esquire, attached as Exhibit 2 to Petitioner's Motion for Discovery. In addition, all other statements of police and civilian witnesses in this case were provided to petitioner either on April 12, 1982, pursuant to the pre-trial mandatory disclosure order of the Honorable Paul Ribner regarding the Internal Affairs Division police investigation, or on May 20, 1982 and June 28, 1982 as part of the Commonwealth's continuing duty to disclose Brady material. See Letters to Anthony E. Jackson, Esq., of May 20, 1982 and June 28, 1982, attached as Exhibits D and E (supplying seven additional statements). On April 21, 1982, petitioner's counsel acknowledged receipt of all discovery provided both informally and as a result of Judge Ribner's order. See supra at 10. Indeed, the Commonwealth even provided counsel with a complete inventory of petitioner's personal belongings seized at the time of his arrest. See Letter

Therefore, additional documentation of that fact would not have changed the result at trial.

Petitioner glibly concludes that "these are only some of the examples of Brady violations by the Commonwealth in this case," and purports to have others. Motion at 5. In fact, as demonstrated, none of these accusations constitutes a violation of Brady or any other constitutional right. They therefore merit neither independent relief nor the imposition of a new burden upon the Commonwealth to obtain and provide information to petitioner as though this were still 1982 or as though the Commonwealth were a defendant in large-scale civil litigation.

Each of petitioner's specific requests will now be addressed below, consistent with his organization. All information was either discoverable pre-trial, and therefore disclosed at that time; or it was not discoverable pre-trial, and therefore is not suddenly discoverable now just because petitioner has compiled an extensive list of requests.

Brady Material

1. All Brady material in the Commonwealth's possession was given to petitioner prior to trial. Since then, the Commonwealth has obtained no new information that either is favorable to petitioner and material to his guilt or punishment, Brady, supra, or that bears materially upon the credibility of a

the defendant. Pa. R. Crim. P. 305B(1)(e). Disclosure of reports of polygraph tests of witnesses, particularly defense witnesses, is not mandated or even mentioned in the section of the rule governing discretionary discovery. See Pa. R. Crim. P. 305B(2). See also Commonwealth v. Jones, 530 Pa. 591, 619 A.2d 931 (1992) (prosecutor not even required to disclose that one of its own witnesses had been administered a lie detector test); Commonwealth v. Aye, 275 Pa. Super. 369, 418 A.2d 767 (1980) (same). Petitioner has failed to present even a statutory violation, much less a constitutional one. Furthermore, the Commonwealth has been unable to unearth any information that the witness passed a polygraph test.

6. Police Surveillance

Petitioner's sixth "specific instance" of a Brady violation is articulated as follows:

6. The Philadelphia Police Department conducted intensive surveillance of petitioner since the time of his youth and maintained records on that surveillance. Despite their constant scrutiny, police found no basis for linking petitioner to any criminal activities during those years.

Motion at 5. The Commonwealth is hard-pressed to glean the Brady violation apparent in that bit of pleading. Obviously, petitioner alludes to neither favorable nor exculpatory evidence that had anything to do with the murder of Officer Daniel Faulkner. There is therefore no Brady violation. In any case, such information is immaterial: the fact that petitioner had no prior record was duly brought out at trial and at sentencing.

hospital security reports which [sic] demonstrate that the petitioner did not [confess to the crime] at the hospital." Motion at 4.

This is incorrect. On April 12, 1982, pursuant to the order of the Honorable Paul Ribner, petitioner was sent a duplicated copy of the entire Internal Affairs investigatory file, which contained all statements of police officers and hospital personnel who were present at either the crime scene or the hospital. See Letter to Anthony E. Jackson, Esq., of April 12, 1982, attached as Exhibit B. Petitioner's counsel acknowledged receipt of this file on April 21, 1982. See Letter from Anthony E. Jackson to Edward G. Rendell, District Attorney, of April 21, 1982, attached as Exhibit C. No statement by police or hospital personnel was withheld; no Brady violation occurred. As for any "hospital security reports" that might exist, petitioner has equal access to this information insofar as Jefferson Hospital is the repository for such information. It is not the Commonwealth's obligation, either pre-trial or post-trial, to secure documents petitioner can just as easily obtain himself.

5. The "Key Defense Witness"'s Polygraph

Petitioner next complains that he was not informed that prior to trial, his "key witness" allegedly took and passed a polygraph test.

Pennsylvania Rule of Criminal Procedure 305B(1)(e) only mandates the disclosure of reports of polygraph examinations of

Petitioner's premise is unsubstantiated. He provides no support for his bald allegation that Harkins, who was not called to testify at trial, was subsequently interviewed or shown photo arrays about which petitioner was not informed. Indeed, Pa. R. Crim. P. 305B(2)(b) makes discretionary with the court the disclosure of only those oral statements of eyewitnesses the Commonwealth intends to call at trial. As Mr. Harkins was not called, his pre-trial statements were not even part of discretionary discovery. The Commonwealth did provide, however, those statements within its possession before trial. The Commonwealth is unaware of any additional statements from Harkins related to the murder. Further, the Commonwealth has no information that this witness was ever shown a photo array as petitioner now alleges. Petitioner completely fails to identify those officers or individuals who conducted this purported "interview" or showed the witness photographs.

Mere speculation about interviews and the materiality of their contents hardly constitutes a Brady violation. This allegation is therefore totally unfounded.

4

**The Alleged Suppression of Police
Logs and Hospital Security Reports That
Demonstrate Petitioner Did Not Admit Killing
Officer Faulkner**

The fourth "specific instance" of a Brady violation allegedly perpetrated by the Commonwealth was its failure to disclose "police logs, reports[,] and memoranda as well as

Commonwealth v. Brinkley, 505 Pa. 442, 480 A.2d 980 (1984);

Commonwealth v. Davis, 470 Pa. 193, 368 A.2d 260 (1977).⁵

To the extent petitioner complains that he should have been told that Jones did not say she saw petitioner kill Officer Faulkner intentionally -- despite a detective's alleged offer to let her work the Locust Street area in exchange for such information -- this claim is meaningless. (See N.T. 6/29/82, 129, 132-33. Indeed, Jones said exactly this much at trial, and the jury still convicted petitioner of first-degree murder. Therefore, no pre-trial disclosure of such information would have changed the verdict. The Commonwealth clearly can neither provide that which does not exist nor predict which witnesses will recant statements previously provided. Hence, there was no Brady violation. Santiago, supra.

3. Reports of an Interview with Robert Harkins

Third, petitioner claims that he was not given a report of an alleged home interview with eyewitness Robert Harkins, Jr., or a report concerning photographs shown to Mr. Harkins at that time. He concedes he did receive other pre-trial statements of Harkins. In one of those statements, Harkins said that he might be able to identify the shooter (not that he could identify him, contrary to petitioner's representation). Motion at 4.

⁵Moreover, petitioner had no right to the statements of defense witnesses. See Pa. R. Crim. P. 305B(2)(b); Commonwealth v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991), cert. denied, 504 U.S. 946, 112 S. Ct. 2290 (1992).

Petitioner's unsubstantiated accusation against the Commonwealth hardly justifies the creation of a new burden of production where none has previously existed.

2. Defense Witness Veronica Jones' "Five-Hour Interview"

Petitioner's second "specific instance" of a Brady violation is the Commonwealth's alleged failure to disclose the report of a five-hour interview of defense witness Veronica Jones at the Sixth District headquarters.

No such report exists. Indeed, from the very same trial testimony that petitioner derives this claim, it is evident that no formal interview was taken. See N.T. 6/29/82, 129 ("Did you give them an interview?" "No. They had me locked up. No.").⁴ Even pre-trial, therefore, petitioner had no right to her so-called statement as it was not reduced to writing. See

⁴In fact, Ms. Jones testified only that the police "held" her for prostitution for five hours -- not that they interviewed her for that amount of time. N.T. 6/29/82, 132-133. Counsel tried and failed several times to have Ms. Jones say she had given a statement. For example, he asked:

Q. You are saying you did not give them a statement?

A. They were more so conversating among each other and I guess they expected me to say something in their behalf, you know, but I couldn't.

Id. at 131-32. Two pages later, he asked:

Q. You were questioned by the police?

A. I wouldn't say questioned.

Id. at 134.

States v. Bagley, 473 U.S. 667, 682, 105 S. Ct. 3375, 3383 (1985).

Petitioner fails in his petition to demonstrate that any existing evidence was suppressed; if it was, that it was exculpatory or otherwise favorable to him; and if it was both suppressed and exculpatory, that it was material to the issues at trial -- that is, that but for the Commonwealth's failure to disclose this evidence, the result at trial would have been different. Santiago, supra.

1. The Alleged Coercion of a Witness Who Then Falsely Denied Seeing the Shooting

Petitioner's first "specific instance" of a Brady violation is that "one of the individuals who signed police Investigation Review Record(s) had been threatened, intimidated[,] and coerced into signing a false statement in which he denied seeing the shooting." Motion at 3. This is not only unsupported, but unrelated to Brady. Petitioner's motion offers this court no information concerning what witness he is talking about. It offers no substantiation for the claim that this witness was threatened, or even bothers to tell us by whom. It does not state exactly what information was suppressed, how it was exculpatory, or indeed, how this alleged witness's alleged experience was in any way material -- that is, that but for the Commonwealth's failure to disclose it (if it even knew about it), petitioner would have been acquitted. The claim is preposterous.

The mere act of filing a PCRA petition does not place a petitioner in the position he was in prior to trial. It surely does not place him in a more privileged position, entitling him to receive more information and documentation than he was entitled to pre-trial, when he was presumed innocent.

Petitioner's motion should be denied.

A. The Six Alleged Brady Violations That Purportedly "Underscore" Petitioner's Request for Discovery

Petitioner's alleged Brady violations merit neither independent relief nor the creation of some greater right to discovery where none previously existed. Each of the six alleged "violations" is addressed below.

To establish a Brady violation, a defendant must show (1) that the prosecution suppressed evidence, (2) that the evidence suppressed was favorable to the defendant or exculpatory, and (3) that the evidence suppressed was material to the issues at trial. Santiago, 654 A.2d at 1069 (citations omitted). "Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., quoting Pennsylvania v. Ritchie, 480 U.S. 39, 57, 107 S. Ct. 989, 1001 (1987); United

³(...continued)

The relevance of the Equal Protection, Compulsory Process, and Effective Assistance of Counsel clauses to petitioner's discovery motion remains unexplained.

progeny. Cf. Brison, supra.² Brady requires the disclosure of "evidence favorable to an accused" where the evidence is "material either to guilt or to punishment." Brady, 373 U.S. at 87, 83 S. Ct. at 1196-97. It has been extended to include evidence that "bears materially upon the credibility of a key prosecution witness." Giglio v. United States, 405 U.S. 150, 154, 92 S. Ct. 763, 766 (1972). See also Commonwealth v. Santiago, 439 Pa. Super. 447, 654 A.2d 1062 (1994).

This continuing requirement, narrowly defined by the due process guarantees of Brady, circumscribes the defendant's post-conviction right to information. No broader disclosure requirement exists, as any greater obligation would undermine the finality of criminal judgments, permitting defendants to re-shift the burden of proof to the Commonwealth at will. Indeed, it would permit in every case precisely what has happened here: a deluge of burdensome, irrelevant, post-appeal discovery requests designed to postpone and/or preempt a duly imposed sentence.³

²More precisely, Brady is not a discovery rule at all, but rather one of fairness and minimum prosecutorial obligation. Commonwealth v. Santiago, 439 Pa. Super. 447, 654 A.2d 1062, 1068 (1994) (citations omitted).

³Not surprisingly, petitioner cites no authority for his discovery requests. He simply announces that he is entitled to the desired information under "the laws of the Commonwealth" -- which he clearly is not, see supra at 2-3 -- and under his "rights to due process, equal protection, compulsory process, and effective assistance of counsel under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and their parallel provisions under the Pennsylvania Constitution." Motion at 2.

(continued...)

His list of requests, though lengthy, cites not one document that the Commonwealth is now required to produce. Certainly, if the Commonwealth discovered any evidence or information to which petitioner was entitled under Brady, the Commonwealth would provide it. In the course of its work in this case, the Commonwealth has not, thus far, discovered any Brady material that petitioner has not already received.

II. ARGUMENT

It is clear in Pennsylvania that there is no statutory right to post-conviction discovery. Cf. Commonwealth v. Brison, 421 Pa. Super. 442, 618 A.2d 420, 423 (1992), quoting In the Matter of Dabbs v. Vergari, 149 Misc.2d 844, 570 N.Y.S.2d 765 (Sup.Ct. Westchester Co. 1990). Nowhere in the Post Conviction Relief Act itself, the Pennsylvania Rules of Criminal Procedure that govern post-conviction proceedings, or the Local Rules governing PCRA petitions is there a provision either permitting a petitioner to obtain or requiring the Commonwealth to disclose any documents or information, including that which would have been discoverable prior to trial. See 42 Pa. C.S.A. sec. 9541 et seq.; Pa. R. Crim. P. 1500 et seq.; New PCRA Practice and Procedure Outline (effective July 1, 1993). The only right of "discovery" that continues in a person convicted of a crime is the constitutional right to material specified in Brady v. Maryland, supra, and its

Petitioner fundamentally misunderstands the nature and function of the Post Conviction Relief Act. It does not provide for post-conviction discovery. It places no burden, either of proof or of production, on the Commonwealth at any time. It surely does not place a greater burden on the Commonwealth than existed prior to trial, when the Commonwealth bore the whole burden and petitioner bore none at all.

Nor does petitioner have a constitutional right to the information he seeks. Obviously, he is still protected by the due process guarantees of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). Those protections, however, do not create a right to receive pre-trial discovery again; nor do they create a new right to information outside the scope of Brady; nor, indeed, do alleged violations of those protections create such a new right. Petitioner confuses these issues by alleging six "specific instances" of Brady violations that he claims "mandate" full discovery. The underlying claims themselves are specious. Even if they were valid, however, mere allegations of Brady violations do not in and of themselves create a broader right to examine the Commonwealth's files.¹ Both the logic and the substance of petitioner's motion are faulty.

¹Indeed, even pre-trial, a defendant does not have the right to court inspection of the Commonwealth's investigatory files unless there exists some reason to believe that inspection would lead to the discovery of evidence helpful to the defense. Commonwealth v. Gartner, 475 Pa. 512, 381 A.2d 114 (1977). Thirteen years post-trial, petitioner still fails to make such a showing.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION - CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA

: JANUARY TERM, 1982
: BILL NO. 1357
:

v.

MUMIA ABU-JAMAL
a/k/a Wesley Cook

: (PCRA)
:

COMMONWEALTH'S RESPONSE
TO PETITIONER'S MOTION FOR DISCOVERY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

LYNNE M. ABRAHAM, District Attorney of Philadelphia County,
by her Assistants, RONALD EISENBERG, Deputy, Law Division,
CATHERINE MARSHALL, Chief, Appeals Unit, LINDA PERKINS, Chief,
Motions Unit, HUGH BURNS, JR., Assistant District Attorney, and
E. KIMNEY ZALESNE, Assistant District Attorney, respectfully
represents:

I. INTRODUCTION

◆ In his Motion for Discovery, petitioner requests every conceivable document that may be related, however remotely, to his case. As though this were a civil action, petitioner presents a broad, sweeping request for information and material possessed by anyone in the Commonwealth so that he may "further investigate and prepare" his issues for a post-conviction petition. Motion at 1.

CODICIL

The full and complete file used, prepared and/or maintained by the office of the District Attorney of the City of Philadelphia, its agents and assigns, in the case of Commonwealth v. Mumia Abu-Jamal 1357-59, including, but not limited to, all records, files, memoranda, reports, notes, rough notes, whether typed or handwritten or tape recorded.

Also wanted to serve subpoena.
for the body of a woman
named Cynthia White. ^{was a witness} — in the case.
who may be in custody.
— or information as to
her whereabouts.
I refused to.

RACHEL H. WOLKENSTEIN

Attorney at Law
67 Wall Street, Suite 2411
New York, N.Y. 10005

(212) 406-4252

APR 23 1997

APPEALS UNIT

22 April 1997

Lynne Abraham
District Attorney
1421 Arch Street
Philadelphia, Pa. 19102

Re: Commonwealth v. Mumia Abu-Jamal
January Term 1982 Nos. 1357-58

Dear Ms. Abraham:

Both on direct appeal, decided in 1989, and in his pending PCRA appeal, Mumia Abu-Jamal has raised the issue of intentional racial discrimination in the prosecution's use of peremptory strikes during his trial. During direct appeal the Commonwealth advanced purported race neutral reasons for its peremptory jury challenges which struck 75% of the potential black jurors from the panel. Additionally, Jamal alleged that the Philadelphia district attorneys office has engaged in a pattern of striking black jurors. Jamal cited a federal case noting such a pattern. Diggs v. Vaughn, 1991 U.S. Dist. LEXIS 3945 (E.D.Pa. 1991) (citing "testimony by attorneys familiar with practices in Philadelphia courts during the relevant period, to the effect that assistant district attorneys routinely sought to exclude blacks from criminal juries"). The Commonwealth responded that the "relevant period" in Diggs v. Vaughn was 1977, not 1982.

Now, with the revelation of the 1986 McMahon jury selection training seminar there is substantial evidence of a continuing policy in the Philadelphia District Attorney's office to strike black potential jurors and to falsely put forward pretextual reasons for striking those jurors. It is apparent from the tape of the training seminar that this was an official training seminar, produced by "DATV" and carrying the imprimatur of "Ronald Castille, District Attorney." The seminar was presented after the Batson decision. The seminar given by Jack McMahon demonstrates a policy to contravene the Supreme Court's prohibition against removal of potential jurors on the basis of race. This training seminar is an admission that the office of the Philadelphia District Attorney implemented and subsequently

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concealed a policy of juror exclusion on the basis of race. This policy covers the period of Jamal's trial and direct appeal.

Jamal seeks discovery of information regarding the policy of jury selection in the Philadelphia DA office during the period of 1977 through 1989 (from the Diggs trial through the decision of Jamal's direct appeal). Specifically, Jamal requests:

- 1) Copies of any tapes, written material or other information made available to assistant district attorneys concerning jury selection at the time of the training seminar that Jack McMahon spoke at;
- 2) Copies of any tapes, audio or video, written material or other information prepared for and/or available to district attorney staff concerning jury selection for the period of 1977-1989;
- 3) Copies of any notes, memorandum or correspondence concerning the preparation of the training seminar that Jack McMahon spoke at;
- 4) Copies of any notes, memorandum or correspondence regarding the training seminar on jury selection given by Jack McMahon whether those notes, etc. were written prior to or after the date of the original training seminar;
- 5) Copies of all memorandum, news releases and statements issued by the Philadelphia DA's office to any other governmental agency or body concerning jury selection, including the question of racial discrimination in jury selection, during the period of 1977-1989;
- 6) Copies of all memorandum, notes or correspondence concerning policy on jury selection developed after the Batson decision;
- 7) Names of all of Jack McMahon's supervisors, co-counsel and team members from the time he began working as an assistant district attorney until he presented the jury selection seminar;
- 8) Copy of all notes, including handwritten notes, regarding jury selection in matter of Commonwealth v. Jamal made by ADA Joseph McGill and any other staff member;
- 9) Copy of all notes, including handwritten notes, and memorandum in preparing the District Attorney's answer on the direct appeal regarding the Batson issue;
- 10) The names of the persons who authorized and/or organized the training seminar that Jack McMahon spoke at;
- 11) The names of the persons who authorized the recording on video tape of the training seminar that Jack McMahon spoke at;
- 12) The date of the original training seminar that Jack McMahon spoke at;
- 13) The names of the persons who authorized and/or organized the playing of the tape after the original seminar;

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14) Information on where the tape was maintained since it was recorded and its availability to individual Assistant District Attorneys for viewing;

15) The names of all attendees at the original seminar that Mr. McMahon spoke at and the names of all attendees at subsequent viewings of the tape;

16) State whether the Philadelphia District Attorney's office maintains a compilation of the racial composition of juries in homicide cases, and if so, provide a copy of this compilation for the period 1977-89; and

17) Copy of the video tape of the training session on jury selection given by Jack McMahon.

These requests are made pursuant to Brady v. Maryland and the due process and equal protection clauses of the United States and Pennsylvania Constitutions and Rule 395 in furtherance of Jamal's claims for violations of Batson v. Kentucky.

Very truly yours,


Rachel Wolkenstein

cc: Ronald Eisenberg, Deputy, Law Division
✓ Catherine Marshall, Chief, Appeals Unit
Hugh J. Burns, Jr., Assistant District Attorney

JAMAL - VOIR DIRE NOTES
(SCANNED)

SAVED UNDER: MY COMPUTER

↳ Intappl1 on Pdav\Users\Horne

↳ MUMIA ABU-JAMAL

↳ (DATE OF TESTIMONY)

DATES:

1-05-1982

1-08-1982 → MISSING PAGES: 2 & 5-7

6-01-1982

6-02-1982

6-03-1982

6-04-1982

6-07-1982

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6-16-1982 → MISSING PAGES: 288, 295, 388, 425 & 468

6-17-1982

7-06-1982

9-03-1982

1-14-1982

CP 8706-3962

1

IN THE MUNICIPAL COURT OF PHILADELPHIA
DIVISIONAL POLICE COURTS
11TH AND WINTER STREETS

COMMONWEALTH

: MC # 87-06-2351

: CHARGES:

: ROBBERY

: THEFT UNL TAK/DISP

VS

: THEFT REC STOLEN PROPERTY

: AGGRAVATED ASSAULT

: SIMPLE ASSAULT

: RECKLS ENDANG PERSON

CYNTHIA WHITE

: POSS INSTRU CRIME WEAPON

PHILADELPHIA, PENNSYLVANIA

JUNE 29, 1987

BEFORE: HONORABLE CHARLES J. MARGIOTTI

APPEARANCES:

MARK GILSON, ESQUIRE
ASSISTANT DISTRICT ATTORNEY
ATTORNEY FOR THE COMMONWEALTH

HELEN LEVIN, ESQUIRE
ASSISTANT VOLUNTARY DEFENDER
ATTORNEY FOR THE DEFENDANT

REPORTED BY: KAREN J. TIERNEY
OFFICIAL COURT REPORTER

RECEIVED

AUG 05 1987

CLERK OF QUARTER SESSIONS

RECEIVED
COURT REPORTERS

JUL 20 1987

INDEX

COMMONWEALTH'S EVIDENCE

DIR CROSS RE-DIR RE-CROSS

MICHAEL ARRONS

3 12

DEFENSE EVIDENCE

DIR CROSS RE-DIR RE-CROSS

(BAIL REQUEST)
DET. DOUGLAS CULBRETH

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COMMONWEALTH'S EVIDENCE

(ALL WITNESSES SWORN)

THE COURT: HAVE YOU HAD A CHANCE
TO REVIEW THIS CASE WITH HER?

MS. LEVIN: MS. BELCHER DID, AND
WE'RE READY.

MICHAEL ARRONS, HAVING BEEN DULY
SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GILSON:

Q. SIR, WOULD YOU STATE YOUR NAME FOR THE RECORD AND
SPELL YOUR LAST NAME?

A. MICHAEL ARRONS. A-R-R-O-N-S.

Q. MR. ARRONS, I WANT TO DIRECT YOUR ATTENTION BACK
TO JUNE, 21ST OF 1987.

ON THAT DATE, DID YOU HAVE OCCASION TO BE IN THE
1100 BLOCK OF LOMBARD STREET?

A. YES, I WAS.

Q. AND WAS THAT IN THE CITY AND COUNTY OF
PHILADELPHIA?

A. TO THE BEST OF MY KNOWLEDGE.

Q. AND ON THAT DATE AND THAT LOCATION DID YOU HAVE OCCASION TO COME INTO CONTACT WITH ANYONE THAT YOU SEE IN THE COURTROOM?

A. YES.

Q. COULD YOU INDICATE WHO, PLEASE?

A. YES. THIS PERSON RIGHT OVER TO MY LEFT.

(INDICATING)

MR. GILSON: INDICATING THE
DEFENDANT, CYNTHIA WHITE, AT THE BAR OF THE COURT.

BY MR. GILSON:

Q. SIR, COULD YOU PLEASE EXPLAIN FOR US THE NATURE AND CIRCUMSTANCES SURROUNDING YOUR CONTACT WITH THE DEFENDANT ON THAT DAY?

A. I WAS IN MY CAR AND SHE CAME OVER.

Q. WHERE WAS YOUR CAR, SIR?

A. THERE WAS A PARKING LOT OVER THERE.

Q. OKAY.

AND WHAT HAPPENED?

THE COURT: WERE YOU GETTING YOUR
CAR OUT OR PUTTING IT IN?

THE WITNESS: I WAS GETTING READY
TO GET MY CAR OUT.

THE COURT: GO ON, WHAT TIME WAS

THIS?

THE WITNESS: FOUR. . . . 4:30. . .
FIVE IN THE MORNING. SOMETHING LIKE THAT

THE COURT: GO ON.

THE WITNESS: I WAS AT MY CAR AND
SHE MUST HAVE SAW ME THERE. I WAS RESTING IN MY
CAR, BECAUSE I HAD AN HOUR TRIP TO GET HOME.

AFTER I GOT IN MY CAR, SHE CAME
OVER. I HAD MY WINDOW DOWN TO GET SOME AIR. SHE
CAME OVER AND STARTED GIVING ME A HARD TIME AND
ASKING ME IF I WAS INTERESTED IN HER SERVICES AND
I SAID, I'M NOT INTERESTED. PLEASE LEAVE ME
ALONE.

SHE KEPT GOING ON AND ON AND ON.
SHE KNEW SHE COULDN'T GET ME FOR THAT, SO SHE
PULLED A KNIFE ON ME, TRIED TO ROB ME.

BY MR. GILSON:

Q. DID SHE SAY ANYTHING TO YOU?

A. WELL, SHE KEPT GOING TO WHAT I MENTIONED TO YOU.

Q. AFTER SHE PULLED THE KNIFE?

A. SHE JUST SAID, YOU KNOW. . .

THE COURT: WE DON'T KNOW. THAT'S
WHY YOU'RE HERE. YOU HAVE TO TELL US EVERYTHING
THAT HAPPENED.

THE WITNESS: SHE SAID. . . I KNOW
WHAT SHE WAS INTERESTED IN, I PUT THE THING
TOGETHER AND THEN I TOOK. . . I DECIDED I'M NOT
GOING TO GET ROBBED AND GET STUCK WITH A KNIFE.

MS. LEVIN: I AM GOING TO OBJECT.

THE COURT: I'M NOT CONCERNED WITH
YOUR THINKING PROCESS. TELL US WHAT SHE DID, WHAT
HAPPENED.

THE WITNESS: SHE PULLED A KNIFE.

THE COURT: OKAY. AND THEN WHAT
DID SHE SAY?

THE WITNESS: SHE DIDN'T SAY
ANYTHING.

THE COURT: WHERE DID THE KNIFE
COME FROM?

THE WITNESS: SHE HAD IT ON HER, IN
HER POSSESSION SOMEWHERE.

THE COURT: IT WASN'T IN HER HAND
WHEN SHE FIRST SPOKE?

THE WITNESS: SHE HAD A POCKETBOOK.
MAYBE IT CAME FROM THE POCKETBOOK.

I WAS CONCERNED WITH MY LIFE.

THE COURT: OKAY.

BY MR. GILSON:

Q. DID YOU SEE THE KNIFE?

WHAT KIND OF KNIFE WAS IT, DO YOU KNOW?

THE COURT: FOLDING KNIFE.

POCKET BLADE?

THE WITNESS: I SAW IT LATER AT THE
POLICE STATION, WHEN THE POLICE. . . WHICH IF
CONTINUING THE STORY, I HAD TO WAIT. . . WHEN IT
WAS IN HER HAND, I DIDN'T SEE IT.

THE COURT: ALL RIGHT.

THE WITNESS: AND THEN SHE. . .

BY MR. GILSON:

Q. WHAT DID YOU DO AFTER SHE PULLED A KNIFE ON YOU?

A. I JUMPED OUT OF THE CAR.

Q. AND WHAT HAPPENED?

A. I TOOK OFF. SHE CAME RUNNING AT ME WITH THE
KNIFE.

Q. WAS SHE SAYING ANYTHING AT THIS TIME?

A. NO.

Q. ALL RIGHT.

AND WHAT HAPPENED?

A. AND SHE WENT INTO MY CAR AND EVERYTHING, TOOK THE
KEYS AND WENT INTO

MS. LEVIN: OBJECTION. UNLESS HE
SAW THIS.

THE COURT: DID YOU SEE THIS?

THE WITNESS: WELL, SHE HAD. . .

THE ONLY WAY TO GET INTO THE TRUNK WAS TO TAKE MY KEYS. THE TRUNK WAS NOT OPEN.

THE COURT: YOU WERE RUNNING DOWN THE STREET, SHE WAS CHASING YOU WITH A KNIFE?

THE WITNESS: RIGHT.

THE COURT: WHAT HAPPENED THEN?

THE WITNESS: I JUST TOOK OFF DOWN THE STREET. THEN I WAS COMING BACK, AND SHE WAS AT MY CAR.

THE COURT: HOW MUCH LATER DID YOU COME BACK TO YOUR CAR?

THE WITNESS: I COULD ALWAYS SEE MY CAR. I WAS JUST DOWN THE ROAD.

THE COURT: YOU TURNED AROUND. DID YOU SEE HER GO TO THE CAR?

YOU HAVE TO DESCRIBE IT, WE WEREN'T THERE.

THE WITNESS: THERE IS A LOT OF DETAILS. I'M TRYING TO, YOU KNOW, GIVE YOU THE HIGHLIGHTS.

THE COURT: YOU HAVE TO BE CLEAR.

THE WITNESS: SHE WENT INTO THE

TRUNK OF MY CAR AND TOOK A BRIEFCASE, OKAY. SHE STARTED GOING THROUGH IT AND TOOK THE BRIEFCASE.

I TRIED KNOCKING ON A FEW DOORS TO CALL THE POLICE, OKAY. AND, I KNOW, AT THIS HOUR OF THE MORNING IT WAS VERY DIFFICULT.

FINALLY SOMEBODY CALLED THE POLICE. THE POLICE WERE ON THEIR WAY. THE POLICE STARTED COMING CLOSE. . .

MS. LEVIN: OBJECTION, UNLESS HE HEARD SOMEBODY CALL.

THE COURT: WHETHER THE POLICE WERE ON THEIR WAY OR WEREN'T ON THEIR WAY. . .

BY MR. GILSON:

Q. WHAT WAS SHE DOING, SIR, AT THIS POINT?

A. GOING THROUGH MY BRIEFCASE.

Q. AND THEN WHAT HAPPENED?

A. SHE SAW THE POLICE CAR. SHE THREW THE BRIEFCASE UNDER. . . UNDER MY CAR. . . NOT UNDER MY CAR, UNDER ONE OF THE PARKED CARS.

MS. LEVIN: OBJECTION TO THAT, UNLESS HE SAW IT.

THE COURT: SHE LOOKED IN THE DIRECTION OF THE POLICE.

THE WITNESS: EXCUSE ME?

THE COURT: HE LOOKED TOWARDS WHERE
THE POLICE WERE COMING FROM?

THE WITNESS: YES.

THE COURT: DID YOU SEE THE POLICE
APPREHEND HER? ARREST HER?

THE WITNESS: NO, THEY DID NOT
ARREST HER.

THE COURT: THEY DID NOT?

THE WITNESS: NO. WELL, I DON'T
KNOW.

THE POLICE OFFICER KNEW HER BY HER
FIRST NAME AND SAID I SHOULDN'T BE MESSING WITH
HER AND THAT HAD ME. . . WHAT WENT ON OR WHATEVER
HE SAID.

SHE HAD TAKEN MY CAR. . . MY
BRIEFCASE, AND SO FORTH. I SAW MY BRIEFCASE UNDER
THE CAR. I WENT AND GOT THE BRIEFCASE. HE SAID,
GET THE BRIEFCASE. I WENT AND GOT THE BRIEFCASE.
HE PROCEEDED TO LET ME SEE. . . FROM THAT POINT
ON.

I SAID THAT SHE HAD MY KEYS, HE
QUESTIONED HER ABOUT MY KEYS. I SAID I'M STRANDED
HERE AND SHE SAID SHE CHUCKED THE KEY. I HAD NO
KEYS. HE LEFT.

THE POLICE, THERE WERE TWO POLICE OFFICERS, THE ONE THAT SEEMED LIKE HE KNEW HER, HE TOOK OFF AND LEFT. I WAS STRANDED THERE.

TEN MINUTES OR SO LATER, SHE COMES BACK TOWARDS MY CAR, OKAY, AND SHE PULLS THE KEYS OUT, STARTS LOOKING THROUGH THE CAR.

THE COURT: WHERE ARE YOU?

THE COURT: WHERE AM I?

I'M RIGHT ON THE CORNER. OKAY. I COULD SEE WHAT WAS GOING ON, AND A MAN CAME OUT AND HE CALLED THE POLICE. HE SAW HER GOING. . . AND WENT AND CALLED THE POLICE. HE CALLED THE POLICE AFTER SHE HAD TAKEN . . . WENT AWAY WITH MY CAR.

THE COURT: SHE DROVE IT?

THE WITNESS: SHE DROVE AWAY WITH MY CAR, YES.

BY MR. GILSON:

Q. WHEN DID YOU NEXT SEE YOUR CAR?

A. WHEN THE CAR WAS FOUND, ABOUT FORTY-FIVE MINUTES LATER.

Q. DID SHE, AT ANY TIME, HAVE YOUR PERMISSION TO TAKE YOUR CAR?

A. NO, SIR, NOT AT ALL.

Q. WHEN YOU GOT YOUR CAR BACK, DID YOU DISCOVER ANYTHING MISSING?

A. YEAH, I HAD SOME MONEY IN THE CAR THAT WAS MISSING.

THE COURT: HOW MUCH?

THE WITNESS: ABOUT FORTY-FIVE. . .

FORTY-EIGHT DOLLARS. SOMEWHERE IN THAT AREA.

BY MR. GILSON:

Q. WAS THERE ANY DAMAGE TO YOUR CAR?

A. NO. THE SECOND. . . THE SECOND TIME THE POLICE CAME, IT WAS ONE OF THE TWO GUYS THAT WAS THERE AND HE CALLED IN THAT I SAID THE CAR WAS STOLEN, AND HE SAID I COULD GO WITH HIM AND LOOK AROUND AND FIND THE CAR.

WE DIDN'T FIND THE CAR, WE DROVE AROUND AND THEN, I DON'T KNOW, TWENTY MINUTES OR SO LATER, HE FOUND THE CAR.

MR. GILSON: NOTHING FURTHER, YOUR HONOR.

CROSS-EXAMINATION

BY MS. LEVIN:

Q. MR. ARONS, I'M NOW GOING TO ASK YOU QUESTIONS.

A. OKAY.

Q. HOW WAS MY CLIENT DRESSED?

MR. GILSON: OBJECTION.

THE COURT: YOU MAY ANSWER THAT.

THE WITNESS: I REALLY DON'T
RECALL. I DIDN'T TAKE NOTES. I WAS CONCERNED
ABOUT MY PROTECTION. . . MY LIFE.

BY MS. LEVIN:

Q. NOW, YOU SAID THAT YOU WERE JUST RESTING IN YOUR
CAR AND SHE CAME UP TO YOU AND OFFERED HER SERVICES; IS
THAT RIGHT?

A. YES.

Q. DO YOU MEAN AS A PROSTITUTE WOULD OFFER THE SAME?

A. YES.

Q. WHAT DID SHE SAY?

A. SHE ASKED ME IF I WAS INTERESTED IN HAVING A GOOD
TIME, IT WOULD COST ME SOME MONEY. I SAID, I'M RESTING,
I'M GOING TO BE LEAVING TOWN.

Q. YOU NEVER SAID YOU WERE INTERESTED AND YOU NEVER
LET HER IN THE CAR?

A. ABSOLUTELY NOT.

Q. YOU WERE IN A PARKING LOT FOR ALMOST A HALF AN
HOUR AND NEVER LET HER IN THE CAR?

MR. GILSON: OBJECTION, YOUR HONOR.

IT'S ARGUMENTATIVE.

THE COURT: IT'S BEEN ANSWERED.

YOU DID NOT LET. . .

THE WITNESS: I DID NOT LET HER IN
MY CAR AT ALL.

MS. LEVIN: JUST A MOMENT.

BY MS. LEVIN:

Q. OKAY.

AND YOU NEVER HAD ANY KIND OF SEXUAL RELATIONSHIP
WITH MY CLIENT ON THAT NIGHT; IS THAT RIGHT?

A. ABSOLUTELY NOT.

Q. NOW, WHERE WERE YOU COMING FROM AT 4:30 IN THE
MORNING?

MR. GILSON: OBJECTION. RELEVANCY.

THE COURT: I'LL PERMIT THE
QUESTION.

THE WITNESS: I WAS WITH A COUPLE
FRIENDS. I WAS WITH A COUPLE FRIENDS.

BY MS. LEVIN:

Q. AND WHERE WERE YOU COMING FROM?

THE WITNESS: FROM, YOU KNOW, THE
SECOND STORY.

BY MR. DEF:

Q. NOW, THAT'S A CLUB?

A. YES. AND PRIOR TO THAT, THE POLO CLUB.

Q. WHO?

A. POLO.

Q. I SEE.

WHEN YOU ARRIVED AT THE PARKING LOT WHERE YOUR CAR WAS, YOU WERE BY YOURSELF; IS THAT RIGHT?

A. YES, EXACTLY.

Q. AND WHERE IS THE PARKING LOT IF YOU KNOW, SIR?

A. I BELIEVE IT WAS THE ADDRESS THAT HE HAD MENTIONED.

Q. IS IT ON LOMBARD STREET? ARE YOU FAMILIAR WITH THE AREA?

A. NO.

Q. AND HOW LONG DID YOU SAY SHE CAME OVER AND TALKED TO YOU IN THE CAR?

A. HOW LONG WAS IT?

I WAS IN THE CAR, AND THE WINDOW. . . I WOULD SAY IN THE NEIGHBORHOOD OF TEN MINUTES OR SOMETHING LIKE THAT.

Q. SO, FOR TEN MINUTES SHE HAD THIS CONVERSATION, SHE NEVER HAD ANY KIND OF SEXUAL RELATIONSHIP WITH YOU, NEVER GAVE HER ANY MONEY. THAT'S WHAT YOU'RE TELLING US?

A. THAT'S CORRECT.

Q. ONLY YOU DIDN'T. . . YOU SAID THAT WHEN THE KNIFE WAS IN HER HAND, YOU DIDN'T SEE WHERE IT CAME FROM; IS

THAT RIGHT?

A. WELL, I BELIEVE SHE HAD A POCKETBOOK.

Q. NO, SIR, DID YOU SEE WHERE THE KNIFE CAME FROM?

A. AGAIN, I WAS CONCERNED WITH MY PROTECTION. I SAW A KNIFE, BUT I WAS NOT CONCERNED WHERE IT CAME FROM. I KNOW IT CAME FROM SOMEWHERE.

Q. YOU DIDN'T SEE WHERE IT CAME FROM?

YOU CAN ANSWER YES OR NO?

A. YES.

Q. YES? THAT'S CORRECT, YOU DIDN'T SEE WHERE IT CAME FROM?

A. YES.

Q. AND YOU DIDN'T SEE THE KNIFE, YOU SAID, WHEN IT WAS IN HER HAND, YOU DIDN'T SEE. . . DID YOU SEE THE BLADE?

A. WHEN IT WAS PULLED OUT, YES.

Q. HOW LONG WAS THE BLADE?

A. ABOUT LIKE THIS. (INDICATING)

THE COURT: ABOUT SIX INCHES.

THE WITNESS: AROUND THAT, YEAH.

BY MS. LEVIN:

Q. AND SHE STOOD OUTSIDE YOUR CAR THE WHOLE TIME SHE HAD THE KNIFE; IS THAT RIGHT?

A. WELL, SHE HAD A KNIFE A VERY SHORT PERIOD OF TIME

WHEN I RAN OUT OF THE CAR.

Q. SHE PULLED THE KNIFE, YOU DECIDED TO. . . SHE WAS ON THE DRIVER SIDE OF THE CAR?

A. RIGHT.

Q. YOU DECIDED TO JUMP OUT OF THE CAR AT THAT TIME?

A. YEAH, I OPENED THE DOOR AND RAN OUT OF THE CAR.

Q. OKAY, SIR.

AND DID YOU HAVE THE KEYS IN THE CAR AT THAT TIME?

A. YEAH.

Q. YOU DIDN'T DRIVE OFF?

A. (INDICATING)

THE COURT: YOU HAVE TO ANSWER THE QUESTION, NOT SHAKE YOUR HEAD.

MS. LEVIN: INDICATING FOR THE RECORD. . .

MR. GILSON: INDICATING YES TO THE FIRST QUESTION, NO TO THE SECOND.

THE COURT: WHEN YOU JUMPED OUT OF THE CAR, THE KEYS WERE IN THE IGNITION?

THE WITNESS: YES, MY MISTAKE, I DID.

BY MS. LEVIN:

Q. AND, SIR, YOU DIDN'T SAY, WAS YOUR WINDOW UP OR DOWN?

A. THE WINDOW WAS DOWN, NOT FULLY DOWN, BUT IT WAS FULLY DOWN A GOOD BIT.

Q. WE'RE TALKING ABOUT THE DRIVER SIDE WINDOW, RIGHT?

A. YES, CORRECT.

Q. AND YOU DIDN'T THINK OF DRIVING OFF IN YOUR CAR?

A. I WAS ABOUT READY TO.

Q. AND INSTEAD YOU JUMPED OUT OF THE CAR?

A. YES.

Q. WAS THAT A MISTAKE?

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: I'LL SUSTAIN IT.

MR. GILSON: IT'S ARGUMENTATIVE.

BY MS. LEVIN:

Q. WHY DID YOU JUMP OUT OF THE CAR INSTEAD OF DRIVING?

MR. GILSON: OBJECTION.

THE COURT: YOU CAN ANSWER.

THE WITNESS: SHE WAS ALL OVER THE

CAR. I FELT IT WAS BETTER FOR ME TO TAKE OFF.

BY MS. LEVIN:

Q. DID YOU THINK YOU WERE MORE LIKELY TO GET AWAY FROM HER ON FOOT OTHER THAN IN A CAR?

THE COURT: HE WAS DEMONSTRATING A BENEVOLENT ATTITUDE.

THE WITNESS: I WAS CONCERNED WITH
MY LIFE AND I DID. . . . THAT'S CORRECT.

BY MS. LEVIN:

Q. WERE ALL THE DOORS TO YOUR CAR LOCKED?

MR. GILSON: OBJECTION.

BY MS. LEVIN:

Q. IF YOU KNOW?

THE COURT: THE OBJECTION IS
SUSTAINED.

BY MS. LEVIN:

Q. YOU JUMPED OUT AND RAN OFF AND YOU SAID THAT SHE
CAME RUNNING AFTER YOU, RIGHT?

AND HOW FAR DID YOU RUN?

A. I RAN THROUGH THE BLOCK AND TRIED TO KNOCK ON SOME
DOORS TO GET SOME HELP.

Q. OKAY.

THAT WAS ON LOMBARD OR ALONG 11TH OR DO YOU KNOW?

A. THAT STARTS LOMBARD, I GUESS IT WAS.

Q. YOU RAN ABOUT A BLOCK AWAY, THAT'S ALL?

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: YOU MAY ANSWER THAT.

THE WITNESS: IT WAS ABOUT A BLOCK
OR LESS.

BY MS. LEVIN:

Q. AND HOW MANY DOORS DID YOU KNOCK ON?

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: YOU MAY ANSWER THAT.

THE WITNESS: THREE OR FOUR.

FIVE.

BY MS. LEVIN:

Q. HOW MANY?

A. AGAIN, YOU DON'T SEEM TO UNDERSTAND. I WAS CONCERNED ABOUT MY PROTECTION.

NO MORE THAN FIVE. BETWEEN THREE AND FIVE.

Q. AND NOBODY ANSWERED ANY OF THE DOORS, RIGHT?

A. NOBODY ANSWERED ANY OF THE DOORS.

Q. DID YOU SCREAM, DO YOU KNOW, DURING THIS TIME?

A. YES, I DID.

Q. WHAT WERE YOU SCREAMING?

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

BY MS. LEVIN:

Q. AND SHE WAS STILL CHASING AFTER YOU?

A. CORRECT, AND. SHE WAS BACK AT MY CAR. I BELIEVE SHE WAS LOOKING THROUGH MY CAR AND COMING AFTER ME AS WELL.

Q. YOU SAY YOU BELIEVE. IN OTHER WORDS, YOU DIDN'T SEE HER?

A. I CAN NOT GIVE ALL THE DETAILS ABCD. A LOT OF EVENTS TOOK PLACE.

Q. MR. ARONS, WHEN YOU WERE RUNNING AWAY AND KNOCKING ON THE DOOR, YOU DIDN'T SEE. . . ACTUALLY SEE HER AT YOUR CAR; IS THAT RIGHT?

A. AT THAT POINT, SHE WAS RUNNING AFTER ME TRYING TO STOP ME FROM KNOCKING ON DOORS.

Q. DID SHE EVER COME INTO PHYSICAL CONTACT WITH YOU?

A. I DIDN'T LET HER GET THAT CLOSE TO ME.

Q. HOW CLOSE DID SHE GET?

A. THE CLOSEST, ABOUT FROM WHERE. . . THE DISTANCE FROM WHERE SHE IS TO ME RIGHT NOW. (INDICATING)

THE COURT: FIVE FEET.

THE WITNESS: SO I WOULDN'T GET TOUCHED WITH THE KNIFE.

MS. LEVIN: INDICATING FIVE TO SEVEN FEET.

BY MS. LEVIN:

Q. AT SOME POINT YOU STOPPED KNOCKING ON DOORS, RIGHT?

A. A MAN WENT TO CALL THE POLICE.

Q. SO YOU ACTUALLY DID HAVE CONTACT WITH ANOTHER CIVILIAN, RIGHT?

A. THERE WAS A COUPLE THAT PASSED BY, BUT THEY DIDN'T

DO ANYTHING ABOUT IT.

Q. OKAY.

DID THEY. . . ANYBODY SAY ANYTHING TO YOU? I'M
GOING TO GO CALL THE POLICE?

A. YES.

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: HE ANSWERED IT.

SOMEBODY SAID, I'LL CALL THE COPS.

THE WITNESS: YES.

BY MS. LEVIN:

Q. THAT WAS SOMEBODY WHOSE DOOR YOU KNOCKED ON?

MR. GILSON: OBJECTION, YOUR HONOR.

THE COURT: THAT'S NOT RELEVANT OR
OF ANY INTEREST TO ME.

PLEASE, THE OBJECTION IS SUSTAINED.

BY MS. LEVIN:

Q. NOW, AFTER SOMEBODY SAID THEY WOULD CALL THE
POLICE, YOU WENT BACK TO WHERE YOUR CAR WAS; IS THAT
RIGHT?

A. AFTER THE POLICE WERE CALLED, WELL, I WAS IN THE
AREA, YEAH.

I KNOW SHE HAD MY KEYS, I WAS TRYING TO SEE WHAT
WAS GOING ON.

Q. ALL RIGHT.

NOW, SIR, AFTER THE PERSON SAID THAT HE WOULD CALL THE POLICE, DID YOU RETURN TO WHERE YOUR CAR WAS?

A. I WAS NOT. . . I WAS IN VIEW OF MY CAR.

Q. OKAY.

AND AT THAT TIME YOU SAY MY CLIENT WAS AT YOUR CAR; IS THAT RIGHT?

A. I DON'T KNOW RIGHT AT THE CAR, BUT CLOSE TO THE CAR. SOMEWHERE BETWEEN THE CAR AND, YOU KNOW, THE ROAD. THE STREET.

Q. OKAY.

AND YOU SAID THAT SHE WAS LOOKING. . . SHE WENT INTO YOUR TRUNK.

DID YOU ACTUALLY SEE THAT OR DID YOU JUST KNOW THAT THAT'S WHERE YOUR BRIEFCASE WAS?

A. I KNEW THAT SHE WAS, AT SOME POINT, SHE WAS IN THE TRUNK OF MY CAR, SHE HAD MY BRIEFCASE IN HER HAND.

Q. YOU ACTUALLY SAW HER GO IN YOUR TRUNK WITH YOUR OWN EYES?

A. YES.

Q. YOU SAW WHEN SHE TOOK THE BRIEFCASE OUT?

A. YES.

Q. THAT'S BEFORE THE COPS ARRIVED?

A. CORRECT.

Q. AND WHEN THE COPS ARRIVED, SHE WAS STILL ON THE

SCENE; IS THAT RIGHT?

A. YES. SHE THREW THE BRIEFCASE UNDERNEATH ONE OF THE CARS I HAD MENTIONED.

Q. OKAY.

AND THE COPS DIDN'T ARREST HER WHEN THEY ARRIVED?

A. NO.

Q. AND THEN LEFT?

A. DON'T LEAVE OUT, THEY ASKED FOR THE KEYS. I MENTIONED TO THEM I DIDN'T HAVE MY KEYS.

Q. IN OTHER WORDS, WHEN YOU FINALLY RETURNED TO THE CAR WITH THE COPS?

A. I WASN'T AT THE CAR. I WAS IN THE STREET WITH THE POLICE.

Q. YOU HAD LEFT THE KEYS. . .

A. THE POLICE NEVER WENT TO MY CAR.

Q. YOU HAD LEFT THE KEYS IN THE CAR, RIGHT?

A. WHEN I RAN OUT, THEY WEREN'T ON ME, THEY WERE IN THE CAR.

Q. AND WHEN YOU RETURNED TO THE CAR, YOU SAID THAT THE KEYS WERE NOT IN THERE?

A. AFTER I TOOK MY BRIEFCASE BACK, THE POLICE OFFICER. . . MY BRIEFCASE, I PUT IT BACK IN MY CAR.

Q. RIGHT, AND AT THAT TIME, WERE THE KEYS IN YOUR CAR?

A. NO.

Q. AND YOU ASKED THE POLICE ABOUT YOUR KEYS?

A. I GOT IN WITH A COMBINATION. I HAVE THE COMBINATION, THAT'S HOW I GOT INTO MY TRUNK.

Q. RIGHT?

A. I DIDN'T HAVE KEYS TO MY CAR, REMEMBER?

Q. LET ME STOP YOU THERE.

IS THAT THE ONLY WAY TO OPEN YOUR TRUNK, WITH A KEY?

A. THE PHYSICAL KEY OR THE COMBINATION, YES.

Q. SO, OKAY.

NOW, YOU PUT... YOU GOT YOUR BRIEFCASE BACK, YOU PUT IT BACK IN THE TRUNK, RIGHT?

A. YES.

Q. THEN, DID YOU GET IN YOUR CAR TO DRIVE AWAY?

A. NO.

Q. DID YOU GO INSIDE?

A. SOMEWHERE ALONG THE LINE, I GUESS, YEAH. WHEN I HIT THE COMBINATION, IT OPENED. I KNEW THE KEYS WEREN'T IN THERE AND SHE ADMITTED TO THE POLICE SHE HAD CHUCKED THE KEYS.

Q. I'M CONCERNED ABOUT WHAT YOU SAW OR DID AND THAT'S WHY I'M ASKING THESE QUESTIONS.

A. OKAY. GO ON.

Q. YOU DIDN'T GET BACK IN THE CAR AFTER YOU PUT THE BRIEFCASE. . . ?

A. I LOOKED THROUGH THE CAR.

Q. AND DID YOU SEE THE KEYS IN THERE AT THAT TIME?

A. NO.

Q. OKAY.

AND THEN YOU SAID YOU STAYED AROUND THE AREA?

A. I COULDN'T LEAVE, MY CAR WAS THERE. I HAD NO KEYS. I COULDN'T LEAVE.

Q. MY CLIENT, DID SHE STAY AROUND THE AREA? (DID SHE LEAVE?

A. SHE WAS DOWN A BLOCK. SHE WALKED AWAY WHEN THE POLICE LEFT AND WENT DOWN THE BLOCK.

Q. YOU SAID SHE CAME BACK TEN MINUTES LATER?

A. TEN FIFTEEN MINUTES. ABOUT TEN MINUTES LATER SHE CAME BACK, YES.

Q. DID YOU HAVE A CONVERSATION WITH HER AT THAT POINT?

A. NO.

Q. DID SHE COME JUST WALKING BACK TO WHERE YOUR CAR WAS?

A. YES.

Q. AND GOT IN AND DROVE IT? IS THAT WHAT YOUR SAYING?

A. SHE LOOKED AROUND FOR THE CAR. I HEARD KEYS AND SHE STARTED THE CAR UP, SHE WAS VERY CLEARLY LOOKING AROUND. SHE LEFT, CAME OUT. . . THAT'S THE PARKING LOT. . . THAT'S THE PARKING LOT, I GUESS, LOMBARD.

Q. DID YOU. . . YOU DIDN'T GO UP AND TRY TO STOP HER AT THAT POINT?

A. NO. I REMEMBERED HE DID NOT TAKE THE KNIFE FROM HER. I KNEW SHE STILL HAD A KNIFE.

Q. HE DIDN'T SEARCH HER?

THE COURT: YOU HAD TOLD THE POLICE THAT SHE HAD PULLED A KNIFE ON YOU?

THE WITNESS: YES, ABSOLUTELY. ABSOLUTELY. AND HE KNEW HER BY HER FIRST NAME.

AND THE SECOND TIME, WHEN THE POLICE CAME AGAIN, ONE OF THE SAME TWO POLICE, ONE OF THEM WAS THERE. NOT THE ONE THAT SEEMED TO KNOW CYNTHIA, AND HE WAS CORDIAL TO ME AND LET ME ENTER THE CAR AND HE CALLED IN THAT THE CAR WAS STOLEN, AND TWENTY MINUTES LATER THEY FOUND HER.

BY MS. LEVIN:

Q. OKAY.

NOW, WHERE WAS THE CAR, WHERE DID YOU FIND. . . NEXT SEE THE CAR, AFTER YOU SAY SHE TOOK IT OFF THE LOT?

A. I DIDN'T SEE IT UNTIL IT WAS RECOVERED SOMEWHERE,

CLOSE TO BROAD STREET. THERE IS A POLICE RECORD, I'M SURE, ON THAT, AS TO THE LOCATION.

Q. THAT WAS THE SAME EVENING, RIGHT?

A. IT WAS NO MORE THAN. . . THERE WAS A DELAY OF MAYBE TWENTY OR SO ODD MINUTES. THE POLICE CAME IN LESS THAN A HALF HOUR, I WOULD ASSUME AFTER THEY FOUND THE CAR.

Q. AND YOU SAY IT WAS SOMEWHERE ON BROAD STREET?

A. CLOSE TO BROAD. I BELIEVE THERE IS A RECORD OF THAT.

Q. AND YOU HAD FORTY-FIVE DOLLARS MISSING?

A. FORTY-FIVE. . . FORTY-SEVEN. SOMEWHERE IN THAT AREA, YES.

Q. HOW MUCH MONEY DID SHE SAY SHE WOULD CHARGE YOU FOR HER SERVICES?

MR. GILSON: OBJECTION, YOUR HONOR.

RELEVANT.

THE COURT: SUSTAINED. ANYTHING

ELSE?

MS. LEVIN: JUST ONE OTHER

QUESTION.

BY MS. LEVIN:

Q. WHEN YOUR CAR WAS RECOVERED, DID YOU ALSO SEE MY CLIENT AGAIN?

A. YES, AND SHE HAD THREE OTHER PEOPLE IN THE CAR, AND ALSO I LOOKED IN THE CAR, THERE WAS SYRINGES ON THE PASSENGER SIDE. . . TWO OR THREE OF THEM AND THE POLICE OFFICER TOOK THEM OUT. . . TOOK THEM OUT OF THE CAR.

MS. LEVIN: NOTHING FURTHER.

MR. GILSON: COMMONWEALTH REST,
YOUR HONOR.

THE COURT: PRIMA FACIE CASE IS MADE OUT ON ROBBERY AS A FELONY OF THE FIRST DEGREE, THEFT, RECEIVING STOLEN PROPERTY AS A FELONY THE THIRD DEGREE, RECKLESSLY ENDANGERING ANOTHER PERSON, SIMPLE ASSAULT, THEFT AS A FELONY OF THE THIRD DEGREE, POSSESSION OF AN INSTRUMENT OF CRIME.

I WILL DISCHARGE AGGRAVATED ASSAULT AS A FELONY.

AS TO THE CHARGES I HAVE INDICATED HAVING BEEN MADE OUT, I ADVISE THE DEFENDANT THAT THE COMMONWEALTH WILL NOW CONSIDER PROCEEDING AGAINST HER BY WAY OF INFORMATION AS PREPARED BY THE DISTRICT ATTORNEY.

IN THE EVENT THE COMMONWEALTH ELECTS TO GO FORWARD WITH THE PROSECUTION ARRAIGNMENT IS SET FOR JULY 20TH, IN ROOM 875 CITY

HALL, TWELVE NOON, AT WHICH TIME SHE MUST APPEAR TOGETHER WITH COUNSEL.

SAME BAIL.

MR. GILSON: THANK YOU, YOUR HONOR.

MS. LEVIN: YOUR HONOR, AS TO THE BAIL?

THE COURT: SEVENTEEN FAILURES TO APPEAR.

MS. LEVIN: MAY WE APPROACH THE BENCH WITH THE DISTRICT ATTORNEY JUST FOR A MOMENT?

THE COURT: I HAVE NO SECRETS, IF YOU HAVE SOMETHING TO PRESENT TO ME ABOUT BAIL, PUT IT ON THE RECORD.

MS. LEVIN: THERE IS A REASON WHY I DIDN'T WANT TO DO THIS IN OPEN COURT. I ASK THAT YOU HEAR IT AT THE BAR OF THE COURT FROM THE HOMICIDE DETECTIVE WHO IS IN THE COURTROOM.

THE COURT: FINE.

MS. LEVIN: AGAIN, I DON'T HAVE ANY PROBLEM WITH HAVING THIS ON THE RECORD.

THE COURT: IF THE DISTRICT ATTORNEY IS INTERESTED IN THIS. . .

MS. LEVIN: I DON'T HAVE A PROBLEM

HAVING IT ON RECORD, I JUST DIDN'T WANT TO DO IT
IN OPEN COURT.

THE COURT: I WANT IT ON THE RECORD
AND IN OPEN COURT, IF YOU HAVE ANYTHING TO SAY,
YOU SAY IT IN OPEN COURT.

MS. LEVIN: I ASK THE DETECTIVE TO
IDENTIFY HIMSELF.

DETECTIVE DOUGLAS CULBRETH, BADGE
9028, HOMICIDE DIVISION, HAVING BEEN DULY SWORN,
WAS EXAMINED AND TESTIFIED AS FOLLOWS:

MS. LEVIN: DETECTIVE, STATE YOUR
NAME FOR THE RECORD AND TELL THE JUDGE WHY YOU
CAME OVER TO SEE CYNTHIA TODAY?

THE WITNESS: DETECTIVE DOUGLAS
CULBRETH. C-U-L-B-R-E-T-H. BADGE NUMBER 9028,
HOMICIDE UNIT.

GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

MS. LEVIN: JUST TELL THE JUDGE WHY
YOU'RE HERE.

THE WITNESS: I'M JUST HERE AS A
RESULT OF HEARING ABOUT THIS CASE, AND HEARING OF
A MS. WHITE BEING IN JAIL, AND BEING INFORMED THAT
SHE HAS RECEIVED THREATS SINCE SHE'S BEEN THERE

AND JUST TO BRING TO THE COURTS ATTENTION, THE DISTRICT ATTORNEY AND THE PUBLIC DEFENDER THAT SHE IS, IN FACT, SHE WAS A COMMONWEALTH WITNESS IN A VERY HIGH PROFILE CASE. . . AND NOTHING ELSE I CAN ADD.

MS. LEVIN: YOUR HONOR, THE PROBLEM IS BEING THERE IS A DANGER.

THE COURT: ALL RIGHT, YOUR THE DISTRICT ATTORNEY. YOU HAVE HEARD THE REQUEST OF THE HOMICIDE DETECTIVE. I THINK YOU OUGHT TO GET TOGETHER AND DECIDE WHAT YOU WANT TO DO AS FAR AS EITHER RELEASING HER OR KEEPING HER IN CUSTODY.

SHE HAS A SERIOUS RTA PROBLEM, SHE'S GOT SEVENTEEN FAILURES TO APPEAR AND TWO HUNDRED ARREST OR THERE IS. . . MAYBE THAT'S AN EXAGGERATION, BUT PAGE AFTER PAGE AFTER PAGE.

I'M MORE THAN HAPPY TO ACCOMMODATE WHATEVER IS IN THE INTEREST OF THE COMMONWEALTH. YOU HAVE TO MAKE A RECOMMENDION ON THE RECORD THAT YOU WANT HER OUT.

MS. LEVIN: MY REQUEST IS THAT YOU ALLOW HER TO SIGN HER OWN BAIL.

THE COURT: LET THE DISTRICT ATTORNEY EVALUATE WHAT THE DETECTIVE HAD TO SAY

AND THAT WOULD BE GUIDED BY THE DISTRICT ATTORNEY
FILES, IF THEY FEEL SHE IS THAT IMPORTANT TO THEM,
SHE CAN SIGN HER OWN BAIL.

MR. GILSON: YOUR HONOR, THE
COMMONWEALTH WON'T OPPOSE DEFENSE COUNSEL'S
REQUEST TO ALLOW THE DEFENDANT TO SIGN HER OWN
BAIL.

THE COURT: S.Q.B.

TESTIMONY CONCLUDED

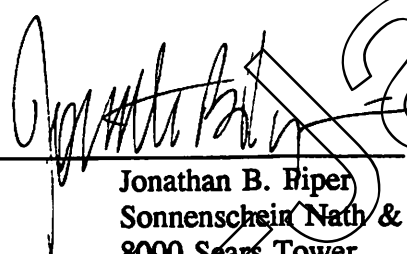
PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa. R. A. P. 121:

Service by United States Mail addressed as follows:

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Dated: July 14, 1997


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