

**SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT**

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COMMONWEALTH,	)	
	)	Case No. CAP 364
Appellee,	)	Capital Appeal Docket
	)	
-vs-	)	
	)	
MUMIA ABU-JAMAL.	)	
	)	
Appellant.	)	

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**PETITIONER JAMAL’S REPLY TO COMMONWEALTH’S ANSWER TO MOTION  
FOR REMAND TO TAKE TESTIMONY FROM YVETTE WILLIAMS.**

**INTRODUCTION**

As the frame-up of Mumia Abu-Jamal is increasingly coming apart at the seams, the District Attorney is resorting to ever more desperate measures to obfuscate the issues and keep the evidence which proves Mumia’s innocence from being heard. In the Commonwealth’s Answer to Petitioner Jamal’s motion for a remand to take testimony from Yvette Williams they actually go so far as to resurrect the hoax of Cynthia White’s supposed death.

**1. THERE IS NO EVIDENCE THAT  
CYNTHIA WHITE IS DEAD.**

At the remand hearing before Judge Sabo in 1997 pursuant to this Court’s Order of May 30 of that year, the District Attorney foisted on the court a putative death certificate from 1992 for a woman named Cynthia Williams, aka Mildred Saunders, who was alleged to be Cynthia White. (Tr. 6/26/97: 143, 178) Although the D.A. misrepresented it as a “self-authenticating” official New Jersey record, the document turned out to be an ad hoc concatenation of several different sealed and unsealed documents stapled together to create the false impression of a single official record. (Tr. 6/26/97: 143) The Social Security number on the putative death certificate did not belong to Cynthia White, but rather to a woman named Migdalia Cruz who was born in Puerto Rico on May 25, 1957. (Petitioner’s Supplemental Offers of Proof to the Court of Common Pleas, dated July 14, 1997, Exhibit 2)

The District Attorney initially made no claim that the dead body in question could be identified as Cynthia White’s by the use of fingerprints, but when Petitioner Jamal raised the issue on cross-examination, the Commonwealth’s witness, a Philadelphia homicide detective Witcher, claimed that there was a fingerprint match that verified that it was White. However, the District Attorney did not at that time present the actual fingerprint cards to the court. When the court later reopened the hearing, over objection, to provide the District Attorney with yet another opportunity to attempt to prove up Cynthia White’s death, the fingerprint evidence which was presented proved, instead, that the body was NOT Cynthia White’s because the fingerprint codes did not match!

According to Detective Witcher, White’s fingerprint codes

were: PM 11 12 CO 16 DO 08 13 PI 18. (Tr. 6/26/97: 155) However, the fingerprint codes in the Camden Police fingerprint records for the deceased woman were: PM 13 12 17 16 PO 18 13 CI 20. (Com. Exh. 8 for remand hearing held 6/26/97-7/1/97) Camden Police Officer Morgan admitted on cross-examination that the fingerprint codes for Cynthia White and those for Cynthia Williams, aka Mildred Saunders, were different and did not correspond. (Tr. 7/1/97: 49-51) Thus, the D.A.’s own fingerprint evidence destroyed their fraudulent claim that the body in question was that of Cynthia White.<sup>1</sup>

In their Answer to the remand motion, the District Attorney continues her efforts at obfuscation by repeating the same frivolous contention that Cynthia White did not use “Lucky” as one of her many aliases. It is obvious from Veronica Jones’ trial testimony that “Cynthia” and “Lucky” are the same person. (Tr. 6/29/82: 129, 134-136) Jones confirmed at the 1996 remand hearing that White was nicknamed “Lucky.” (Tr. 10/1/96: 30) Pamela Jenkins also testified that Cynthia White was nicknamed “Lucky.” (Tr. 6/26/97: 47) Both in 1996 and in 1997, Petitioner offered into evidence at the remand hearings before Judge Sabo court files from various of Cynthia White’s criminal cases which show her alias to be “Lucky,” but the judge refused to accept the evidence. (Tr. 10/1/96: 160-161; Tr. 6/30/97: 140-141) Petitioner offered into evidence at the 1997 remand hearing the sworn statement of private investigator Donald Burton that several individuals in North Philadelphia identified a photograph of Cynthia White as “Lucky.” (Tr. 6/30/97; Petitioner’s Supplemental Offers of Proof, Ex. 1) Petitioner also offered the sworn statement of private investigator Chris Milton that he spoke to various persons in Philadelphia who resided at addresses that Cynthia White had provided as hers in court files

from various of her criminal cases and they stated that they knew her and she used the name “Lucky.” (Petitioner’s Supplemental Offers of Proof, Ex. 2)

## **2. YVETTE WILLIAMS’ TESTIMONY IS ADMISSIBLE EVIDENCE.**

The Commonwealth Respondents claim that Yvette Williams’ testimony is inadmissible hearsay. However, Williams’ recounting of how Cynthia White admitted to her that she (White) was lying when she identified Mumia Abu-Jamal as the person who shot Police Officer Daniel Faulkner is clearly admissible under at least two separate exceptions to the hearsay rule.<sup>2</sup>

Rule 804(b)(3) of the Pennsylvania Rules of Evidence provides a hearsay exception for a statement against penal interest. When White admitted to Williams that she was lying to the police (albeit telling the lies which the police bribed and coerced her to tell), she admitted to violating 18 Pa.Con.Stats. Sec. 4904, which prohibits the making of false unsworn statements to the authorities. This was clearly a statement against penal interest and therefore an exception to the hearsay rule.

Rule 803(2) of the Pennsylvania Rules of Evidence provides for a hearsay exception for an excited utterance. Williams clearly describes White as being extremely nervous and excited when she told Williams about how the police were bribing and coercing her into lying. Thus, the “excited utterance” exception also applies.

Moreover, Yvette Williams’ testimony is corroborated by the prior remand testimony of Veronica Jones and Pamela Jenkins, both of whom recount how the police tried to pressure and cajole them into giving perjured testimony against Petitioner Jamal. Williams’ testimony is also corroborated by all of the other impeachment evidence which brings Cynthia White’s testimony into question, all of which is extensively analyzed in the underlying PCRA petition and will not be repeated here.

## **3. THE PCRA COURT CLEARLY HAS JURISDICTION TO TAKE TESTIMONY FROM YVETTE WILLIAMS ON REMAND AS PART OF THE COURTS’ INHERENT POWERS.**

Petitioner Jamal extensively briefed in the underlying proceedings, and will not repeat here, the argument that the PCRA court, *in the extraordinary circumstances of this case*, had the inherent power, under a number of different doctrines, to hear Petitioner’s claims for relief on the merits even if the filing deadlines created by the 1995 amendments to the PCRA were considered to be jurisdictional. The testimony of Yvette Williams proves up key elements of those *extraordinary circumstances*, namely that an innocent man, Mumia Abu-Jamal, has been framed-up for a murder he did not commit, and that the frame-up was the result of police and/or prosecutorial mis-

conduct in, *inter-alia*, coercing and cajoling witnesses to fabricate testimony against him. The star prosecution witness against Petitioner Jamal was Cynthia White. Yvette Williams’ testimony proves that White lied as a result of bribery and coercion by the Philadelphia Police who, in addition to providing her with money also supplied her with drugs and drug paraphernalia when she was in “protective custody.”<sup>3</sup>

This fits in directly with private investigator George Michael Newman’s declaration, also on file in the underlying proceedings, in which he recounts how the only other prosecution witness to have testified that they saw Petitioner Jamal shoot Officer Faulkner, Robert Chobert, admitted to him that (like Cynthia White) he didn’t even see the shooting.<sup>4</sup>

Yvette Williams’ testimony is highly important in proving up the extraordinary circumstances under which, in this case, the courts should and must exercise their inherent power to entertain Petitioner Jamal’s claims for relief on the merits, regardless of whether or not the underlying petition is considered to be “timely” under the PCRA filing deadlines and the applicable exceptions, and regardless of whether the filing deadlines are considered to be jurisdictional. Williams’ testimony does not only impeach Cynthia White’s trial testimony, it also proves up the police and/or prosecutorial misconduct in suborning perjury by White and violating federal law, as set forth in the landmark *Brady* case by the United States Supreme Court and its progeny, which requires the prosecution to disclose to the defense any exculpatory evidence including evidence which undermines the prosecution’s witnesses or other elements of their case.

Moreover, Petitioner Jamal will argue in this appeal that this Court’s decisions in the *Peterkin* case, and its progeny, should be overturned to the extent that they might be considered as holding that the PCRA filing deadlines are jurisdictional. Yvette Williams’ declaration provides evidence to prove up the circumstances which show that making such filing deadlines jurisdictional is bad public policy because it permits and conceals not only such gross miscarriages of justice as were proved to have occurred with regard to Mr. Peterkin when his conviction and death sentence were vacated by the U.S. District Court after this Honorable Court refused to grant him relief on the basis that it lacked jurisdiction to do so, but specifically proves up the particular gross miscarriage of justice in this case in which an innocent man has been convicted and sentenced to death on the basis of perjured testimony procured by the police through bribery and coercion, and where he can now prove his innocence with the confession of the true killer, Mr. Arnold Beverly, whose confession exonerates Petitioner Jamal and is corroborated by a mountain of evidence, as was specifically set forth in the underlying petition and will be further argued and briefed in this appeal.

**4. IT WOULD RESULT IN A WASTE OF JUDICIAL RESOURCES FOR THIS REMAND MOTION TO BE DENIED AS PETITIONER WOULD BE ENTITLED TO FILE A SUBSEQUENT PCRA PETITION UNDER COMMONWEALTH vs LARK TO RAISE A NEW BRADY CLAIM BASED ON YVETTE WILLIAMS' TESTIMONY SHOULD THIS APPEAL BE DENIED.**

Not only does Yvette Williams' affidavit supplement Petitioner's claim for actual innocence in the current PCRA petition, in the sense that Yvette Williams' testimony directly impeaches the testimony of Cynthia White, and provides further evidence to support Petitioner's contention that under the *exceptional circumstances* in this case, the courts have the inherent power and the duty to hear the underlying petition on the merits, Yvette Williams's affidavit also proves up a fresh *Brady* claim.

"There are three components of a true *Brady* claim. The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either wilfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 US 263, 281-82 (1999). Furthermore, "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' non-disclosure of evidence affecting credibility falls within this general rule." *United States v. Giglio*, 405 US 150, 154 (1972) (quoting *Napue v. Illinois*, 360 US 264, 269 (1959)).

Yvette Williams establishes that the police used a combination of threats and special favors, including supplying illegal drugs and drugs paraphernalia to her in order to induce to induce Cynthia White to give false testimony at Appellant Jamal's trial. Accurate records of all of the contacts between police officers and Cynthia White in the pre-trial period should have been disclosed to the Appellant prior to the original trial. These should have included accurate records of all material conversations between police officers and Cynthia White and accurate records of all and any favours, special treatment or gifts which Cynthia White during the pre-trial period. If these records had been disclosed, not only would Cynthia White's credibility have been destroyed, but the entire original investigation and prosecution would have been tainted. This evidence was plainly wilfully suppressed by the State. In other words, on the basis of Yvette Williams' testimony, Appellant Jamal can plainly satisfy all three components of a true *Brady* violation.

It is common ground between the parties that the Petitioner is unable to commence fresh PCRA proceedings during the currency of the existing PCRA proceedings.

In these circumstances, there are in practice two possible courses which this case could take.

First, the Court might reject the present motion and proceed to consider the present appeal without remanding this action to

the Court of Common Pleas to take Yvette Williams' testimony.

However, if the Court were to adopt this approach, then, if the present appeal were to fail, the Petitioner would immediately issue fresh PCRA proceedings making this *Brady* claim. In the light of *Commonwealth v. Lark*, 746 A. 2d. 585, these further, fresh PCRA proceedings would be timely.

The Petitioner in *Lark* was prevented from presenting the element of his Batson claim, which was based on the MacMahon tape, within 60 days of first learning of the underlying evidence by the same problem which arises in this case, namely the prohibition on commencing fresh PCRA proceedings during the currency of existing PCRA proceedings. He issued fresh PCRA proceedings based on the MacMahon tape within 60 days of the final determination of his appeal in the first PCRA proceedings. The *Lark* court held that these subsequent PCRA proceedings were timely, on the basis that the petitioner in *Lark* had been prevented by an objective external factor, namely the prohibition on commencing fresh PCRA proceedings during the currency of existing PCRA proceedings, from issuing the second PCRA proceedings within 60 days of first learning of the underlying evidence.

The Court would therefore have to hold that further PCRA proceedings issued within 60 days of the final determination of Appellant Jamal's current appeal were timely as well.

The second course would be for this Honorable Court to remand this action to the court of Common Pleas to take testimony from Yvette Williams with instructions to permit Petitioner to amend his Petition to include a new *Brady* claim based upon Williams' testimony and to reconsider its prior ruling on the Petition in light of Williams' testimony.

This Honorable Court has the power to remand this action to the Court of Common Pleas in these circumstances, just as it previously granted two remand motions in the initial PCRA proceedings herein to take testimony from Veronica Jones and Pamela Jenkins. Plainly, this Honorable Court should exercise this power and grant Appellant Jamal's instant motion in these circumstances. This Honorable Court will thereby not only prevent a potentially unnecessary multiplicity of proceedings. This Honorable Court will also thereby ensure that the existing claims in the current PCRA are properly and fully considered on their merits at first instance and that the record is fully developed as to the factual basis for Petitioner's position that there is jurisdiction to hear these claims on the merits.

### **CONCLUSION**

The purpose of the Post-Conviction Relief Act, as stated in the Act itself, is to provide a remedy to persons wrongfully convicted of crimes they did not commit. Yvette Williams' testimony proves that Mumia Abu-Jamal is such a person and that he is entitled to relief. Her testimony proves up the exceptional circumstances in this case which both permit and require the courts to exercise their inherent powers to hear his claims for

relief on the merits, regardless of any statutory deadlines for filing a post-conviction petition, and provides further support for overturning the *Peterkin* line of cases with regard to whether such filing deadlines should be interpreted as being jurisdictional.

Accordingly, this motion should be granted.

Dated: March 8, 2002

Respectfully submitted,

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## ENDNOTES

<sup>1</sup>At the 1997 remand hearing the District Attorneys' Office attempted to use putative evidence of Cynthia White's death to impeach Pamela Jenkins' testimony about Philadelphia Police pressuring her to fabricate testimony against Petitioner Jamal before his original trial; the D.A. claimed that White had died in 1992 although Jenkins testified that she saw White alive in 1997. While the above review of the record demonstrates that there was, in fact, no evidence that Cynthia White was dead, this did not keep Judge Sabo from ruling to the contrary. This is additional evidence that Sabo's objective during the post-conviction proceedings remained the same as that which he expressed at the time of trial, as disclosed in the declaration of Court Reporter Terri Maurer-Carter on file in the underlying proceedings, i.e. "to help 'em fry the n\*\*\*\*r."

<sup>2</sup>Both of the applicable hearsay exceptions discussed herein require that the hearsay declarant be "unavailable." If Cynthia White were dead, as the District Attorney claims, she would clearly be unavailable to testify. Since the District Attorney claims they cannot locate a "live" Cynthia White, and Petitioner's Counsel have been unable to find White either, even if alive she would still be "unavailable" to testify if she could not be located. Since there is no evidence that Cynthia White is dead, if the D.A. truly believes that Yvette Williams' testimony is untrue, let them find Cynthia White and bring her into court to testify and clarify the matter.

<sup>3</sup>While the D.A. claims that White could not have fabricated her account because it was allegedly written down 20 minutes after the incident occurred, this contention assumes the reliability of the police account of when they obtained that statement, something which itself could easily have been fabricated and undoubtedly was. Moreover, the D.A.'s present position directly contradicts the representations made by Assistant District Attorney McGill in pre-trial proceedings in Petitioner's case when McGill successfully defeated Petitioner's repeated motions for a line-up on the basis that the prosecution had no eyewitnesses who could identify Petitioner as the shooter. (See underlying PCRA Petition, Ninth Claim for Relief, Sub-point 2, pp. 161-168; Tr. 1/5/82: 16-18, 20-21)

<sup>4</sup>The District Attorney, in her Answer to Petitioner's Remand Motion, misrepresents the trial evidence to falsely assert that there were five eyewitnesses who claimed to have seen Petitioner shoot the police officer. However, U.S. District Judge Yohn, in ruling on Petitioner's federal habeas petition, referred to only four witnesses and specifically noted that of these only two (White and Chobert) had testified to allegedly having seen the Petitioner shoot the officer. *Jamal v. Horn*, USDC, ED Pa, Case No. 99-5089 (December 18, 2001), p. 5. Although the District Court cites Judge Sabo's PCRA Opinion at 86-87 to the effect that witness Magilton allegedly identified petitioner as the "perpetrator," an examination of the trial transcript reveals that this description of Magilton's testimony is inaccurate and misleading as Magilton testified that he did not see the shooting and only identified Petitioner as someone that he had allegedly seen walking across the street and then lost sight of half-way across the street before the shooting, and then later saw sitting on the curb afterwards. (Tr. 6/25/82: 8.75-8.81; 8.88-8.89)