

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: CONFLICT OF INTEREST OF THE
OFFICE OF THE PHILADELPHIA DISTRICT
ATTORNEY,

No. 125 EM 2019

PETITION OF: MAUREEN FAULKNER,
WIDOW OF DECEASED POLICE OFFICER
DANIEL FAULKNER

**MOTION FOR PROTECTIVE ORDER TO LIMIT DISCLOSURE OF
DISCOVERY AUTHORIZED IN THE APRIL 7, 2020 ORDER**

Respondent District Attorney’s Office (“DAO”), by and through undersigned counsel, respectfully moves this Court for a protective order to limit disclosure of the discovery authorized in the Court’s April 7, 2020 order (the “April 7 Order”).

INTRODUCTION

1. The April 7 Order authorizes the depositions of certain DAO personnel on limited questions relating to the DAO’s exercise of its prosecutorial discretion in the pending PCRA proceeding (the “DAO Depositions”).

2. The DAO objects to this discovery because the DAO's legal strategy in the PCRA proceedings has no bearing on whether a conflict of interest exists under the applicable rules of professional responsibility. It further objects because the DAO's case management decisions are not subject to judicial review, and because the DAO's internal decision-making is protected by the deliberative process and work-product privileges.

3. In light of these objections, which the DAO renews here, the DAO requests that the Court issue a protective order, sealing the DAO Depositions and barring public disclosures regarding the DAO Depositions and/or the Special Master proceedings. The Court expressly invited this motion in its April 7 Order, stating its willingness to consider whether the limited discovery authorized "should be submitted under seal, in camera, or provided some other protection from public disclosure."

4. Good cause exists for the requested protective order. Indeed, the requested protective order is a natural extension of the Special Master's March 6, 2020 order (the "March 6 Order"), which limited participation in the Special Master proceedings to the attorneys of record.

PROCEDURAL BACKGROUND

5. On February 24, 2020, the Pennsylvania Supreme Court assumed jurisdiction over the Petitioner's King's Bench Petition but deferred any ruling on the merits of the Petition until a Special Master conducted an investigation and made recommendations to the Court.

6. On March 3, 2020, the Court appointed the Honorable John M. Cleland, Senior Judge, to serve as Special Master and authorized the Special Master to conduct "such hearings and other proceedings" needed to determine a very narrow issue: whether the "the participation in the underlying criminal case (*Commonwealth v. Wesley Cook, a/k/a Mumia Abu-Jamal*, No. 290 EDA 2019; CP-51-CR-0113571-1982) by any attorneys or staff of the Philadelphia District Attorney's Office who have been identified in the King's Bench Petition presents the appearance of a conflict of interest such as to impede the fair and impartial administration of justice. If the Special Master determines that a conflict exists then he shall determine whether remedial measures may be employed to address the conflict."

7. The Court further authorized the Special Master "to employ all reasonable methods to facilitate the hearing," including "the power to compel the production of testimony and/or documents as appropriate to resolve the issues."

8. On March 6, 2020, the Special Master issued an order, limiting participation in the Special Master proceedings to the attorneys of record and establishing deadlines for party submissions. The Special Master further stated that it would schedule a hearing “if necessary . . . to consider any appropriate evidence and legal arguments” prior to issuing its report and recommendations. The March 6 Order included the following deadlines:

- a. A March 23, 2020 deadline for the DAO to file, under seal, a list of the DAO personnel “who have had, or it is reasonably anticipated will have, a significant involvement in prosecuting the underlying case, including the assessment of the merits of the case, the development of legal strategy, or the litigation of any contested issue.”
- b. An April 8, 2020 deadline for the Petitioner to file, not under seal, any requests for disqualification of DAO personnel and stating the factual basis for the claimed conflict of interest.

9. On April 6, 2020, two days before her disqualification submission was due, Petitioner sought leave to conduct a broad range of pre-hearing discovery in the Special Master proceedings. The requested discovery included responses to

written questions, the production of documents, and the depositions of the District Attorney, numerous DAO personnel, and third-parties.

10. On April 7, 2020, after argument, the Special Master extended the deadline for the Petitioner's disqualification submission to April 29, 2020, and authorized limited depositions of certain DAO personnel. The Special Master denied all other discovery requested.

11. In the April 7 Order, the Special Master limited inquiry in proceedings before him to "whether two specific actions questioned by the Petitioner in the King's Bench petition were appropriate strategic or legal decisions made after due consideration of the law and the facts bearing on issues before the Court in the pending PCRA hearing. The two actions called into question are: (1) Not opposing a defense requested remand to the trial court for consideration of three categories of documents discovered by the DAO while the trial court's decision was on appeal to the Superior Court; and (2) Not interviewing Joseph McGill."

12. Also in the April 7 Order, the Special Master limited discovery to four topics:

- (a) Whether it is the intention of the DAO to defend the conviction in the pending PCRA proceeding;

- (b) Whether the DAO has any evidence to support or justify a decision by the DAO not to defend the conviction;
- (c) What the strategic or legal basis was for consenting to a remand to the PCRA court;
- (d) What the strategic or legal basis was for not interviewing Joseph McGill or otherwise preserving his testimony.

April 7 Order, ¶ 3.

13. In this Order, the Special Master also expressly invited the DAO to move for a protective order: “Upon motion the Court will consider whether any discovery permitted under this Order should be submitted under seal, *in camera*, or provided some other protection from public disclosure.”

OBJECTIONS TO DISCOVERY

14. The DAO will participate in the DAO Depositions, under protest, and preserves here its objections to this discovery.

A. The DAO’s Legal Strategy Is Irrelevant to the Question Whether A Conflict Of Interest Exists Under The Applicable Rules Of Professional Responsibility

15. As framed in the Special Master’s March 6 Order, the Petitioner must show, by clear and convincing evidence, that the participation of DAO personnel in the PCRA proceedings presents “the appearance of a conflict of

interest that would compromise a reasonable person’s confidence in the fair and impartial administration of justice.” March 6 Order, ¶ 2. The discovery authorized under the April 7 Order allows the Petitioner to question DAO personnel regarding the DAO’s legal strategy and case management decisions – questions which have no bearing on whether a cognizable conflict of interest exists. Accordingly, the DAO objects to this discovery as irrelevant to the narrow issues before the Special Master.

16. First, as explained in the DAO’s Answer to the King’s Bench Petition, an actual conflict of interest is required to disqualify a prosecutor. *See Commonwealth v. Breakiron*, 729 A.2d 1088, 1092 & n. 2 (Pa. 1999) (holding that removal of a prosecutor was not warranted absent “actual impropriety” in the prosecutor’s conduct). The cases cited by Petitioner which actually resulted in prosecutor disqualification/recusal all involve actual conflicts of interest. *See Commonwealth v. Eskridge*, 604 A.2d 700 (Pa. 1992) (prosecutor with direct financial conflict disqualified); *Commonwealth v. Lowery*, 460 A.2d 720 (Pa. 1983) (prosecutor who had had previously represented the defendant disqualified); *Commonwealth v. Briggs*, 12 A.3d 291 (Pa. 2011) (prosecutor who had a direct personal relationship with the victims, as well as insufficient office resources to prosecute, appropriately recused under Commonwealth Attorneys Act).

17. Second, even assuming *in arguendo* that a prosecutor could be disqualified for the “appearance of conflict,” that standard cannot be met with evidence purporting to show that a different prosecutor might have adopted a different legal strategy. *See Commonwealth v. Williams*, 980 A.2d 510, 521-22 (Pa. 2009) (finding that a defendant’s disagreement with his attorney’s legal strategy did not imply that the attorney was operating from a conflict of interest). Accordingly, inquiries into the “strategic and legal basis” for the DAO’s case management decisions will not yield any evidence relevant to the issue before the Special Master.

18. Third, the deposition of counsel regarding litigation matters is an extraordinary remedy. *See Cooke v. Outdoor World Corp.*, 29 Pa. D. & C.4th 572, 573 (Dauphin C.P. 1995) (quashing a deposition on the adequacy of an attorney’s representation because “oral depositions of parties’ lawyers . . . should be ordered only under clear or extreme circumstances”). Permitting such discovery in this case, based on the Petitioner’s baseless imputation of nefarious motives to the DAO’s case management decisions, would open a Pandora’s box and improperly permit challenges to a prosecutor’s exercise of his or her sole discretion based merely on differences of opinion and policy.

B. The DAO's Case Management Decisions Are Not Subject To Judicial Review Absent A Threshold Showing Of Purposeful Abuse

19. The District Attorney is an elected constitutional officer vested with broad discretion in the handling of criminal litigation and prosecutions. *See* Pa. Const. Art. 9, § 4; *see also Commonwealth v. Stipectich*, 652 A.2d 1294, 1295 (Pa. 1991); *McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960).

20. Separation of powers principles render courts wary of interfering with a prosecutor's setting of policy objectives and management of individual criminal cases. For this reason, judicial review of prosecutorial decisions is limited to extraordinary circumstances where there is "a threshold showing of a valid claim of purposeful abuse." *Commonwealth v. Buonopane*, 599 A.2d 681, 684 (Pa. Super. 1991) (holding that the trial court violated the separation of powers doctrine when it compelled a prosecutor to testify regarding the decision to charge the defendant with the death penalty without any preliminary evidence of a constitutional violation or similar abuse). The United States Supreme Court has similarly held that "the showing necessary to obtain discovery [into a prosecutor's discretionary decisions] should be a significant barrier to the litigation of insubstantial claims." *United States v. Armstrong*, 517 U.S. 456, 464-66 (1996) (holding that the trial court erred in permitting discovery on the defendant's

selective enforcement claim because the proffered anecdotal evidence did not support a threshold finding of selective prosecution).

21. The DAO objects to the ordered discovery because the Petitioner has not made any threshold showing of “a valid claim of purposeful abuse.” Petitioner’s speculations regarding the DAO’s purported motives and her disagreements with the DAO’s policy positions fall far short of this standard.

C. The DAO’s Internal Decision-Making Is Protected By The Deliberative Process And Work Product Privileges

22. The DAO also objects to the ordered discovery because it will force disclosure of internal decision-making subject to the deliberative process and work product privileges.

23. The deliberative process privilege prevents the disclosure of “confidential deliberations of law or policymaking that reflect opinions, recommendations or advice.” *Commonwealth Acting ex rel. Unified Judicial Sys. v. Vartan*, 733 A.2d 1258, 1265 (Pa. 1999) (plurality); *see also Furey v. Wolfe*, Civil Action No. 10-1820, 2011 U.S. Dist., LEXIS 16465, *23-*25 (E.D. Pa., Feb. 18, 2011) (holding that conversations between an Assistant District Attorney and the First Assistant, about whether plaintiff should be offered an Accelerated Rehabilitative Disposition program, and under what terms, were protected by the deliberative process privilege).

24. In *Vartan*, this Court discussed the scope of the deliberative process privilege and explained how its protections facilitate the healthy operation of government organizations.

The deliberative process privilege benefits the public, and not the officials who assert the privilege. The purpose for the privilege is to allow the free exchange of ideas and information within government agencies. The privilege recognizes that if governmental agencies were forced to operate in a fishbowl, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer.

Vartan, 733 A.2d at 1264. (internal citations omitted). For the privilege to apply, a communication (1) must have been made prior to the completion of the deliberative process, (2) must make a recommendation or express opinions on legal or policy matters, and (3) must not be purely factual in nature. *Id.*

25. The work product privilege is similar in that it shields the mental processes of attorneys so that they may analyze and prepare a case, but it does so to protect the adversary system as a whole, rather than the healthy functioning of a particular government organization. Although in civil cases, parties are able to discover some information that was prepared in anticipation of litigation. “discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” Pa.R.C.P. 4003.3 and Explanatory Comment.

26. Both the deliberative process and work product privileges have been found to protect prosecutorial decisions within a District Attorney's Office. *See, El v. City of Pittsburgh*, Civil Action No. 15-00834, 2017 U.S. Dist. LEXIS 118542, *1 (W.D. Pa. July 28, 2017). In *El*, plaintiffs filed a §1983 claim against the City of Pittsburgh and multiple police officers alleging excessive force, and assault and battery stemming from an arrest in a resolved criminal matter. *Id* at *1-8. During discovery, plaintiffs deposed the Assistant District Attorney responsible for their related criminal prosecution and sought to ask him questions about why the Office of the District Attorney withdrew and then amended the criminal charges to which they pled guilty. *Id* at *10. Counsel objected and subsequently sought a protective order on the basis of the work product doctrine, the deliberative process privilege, and because the questions improperly called for legal opinions.

27. In granting the requested protective order, the Court held that the reasoning behind the withdrawal and amendment of charges was protected by the deliberative process privilege because the reasoning involved deliberations of law or policymaking, and the exchange of opinions, recommendations, or advice among attorneys in the District Attorney's office. *Id.* at 17 (emphasizing that even though the District Attorney's Office was not a party to the case, the court had to take into account the "possibility of future timidity by government prosecutors if forced to disclose the nature of their deliberations"). The court also

held that that when plaintiffs inquired into “why” the District Attorney’s office made certain charging decisions, they sought the mental impressions of attorneys, which implicates the type of information that the work product privilege was meant to protect. *Id.* at 13.

28. The April 7 Order authorizes the depositions of certain DAO personnel on four topics as they relate to two case management decisions: (1) not opposing a defense-requested remand to the trial court for consideration of three categories of documents discovered by the DAO while the trial court’s decision was on appeal to the Superior Court; and (2) not interviewing Joseph McGill. April 7 Order, ¶ 3. As a result, the DAO Depositions will focus almost exclusively on matters subject to the deliberative process and work product privileges: the conclusions, opinions, theories, recommendations, policy priorities, and thought processes of attorneys within the DAO. Such discovery is wholly improper and the DAO will participate in the ordered discovery only under protest.

LEGAL ARGUMENT

To obtain a protective order, a moving party must establish good cause. Pa. R.C.P. No. 4012(a). Although there are many competing tests for what constitutes good cause, in Pennsylvania, there are no bright line rules and good cause is evaluated on a case-by-case basis.

Good cause exists to seal the DAO Depositions. As explained above, the DAO Depositions will inevitably result in the disclosure of privileged and highly confidential information regarding the DAO's discretionary strategic decision-making. The DAO has a legitimate interest in controlling and limiting dissemination of such testimony because disclosure beyond the parties to this case will undermine the DAO's exclusive authority to set policy objectives and manage individual prosecutions. Moreover, there is no countervailing interest mandating public disclosure. Pretrial depositions are not "public components" of a court proceeding. *Dougherty v. Heller*, 138 A.3d 611, 630 (Pa. 2016); *see also Stenger v. Lehigh Valley Hospital Center*, 554 A.2d 954, 960 (Pa. Super. Ct. 1989) (finding that a protective order prohibiting the dissemination of information obtained through pretrial discovery did not run afoul of the First Amendment). In these circumstances, an order sealing the DAO Depositions is both necessary and appropriate as set forth in the proposed protective order.¹ *See Lopez v. CSX Transp., Inc.*, Civil Action No. 3:14-257, 2015 U.S. Dist. LEXIS 77689, *14-20 (W.D. Pa., June 16, 2015) (finding good cause to issue a protective order limiting

¹ Among other things, the proposed order bars the submission of any deposition excerpts in the Petitioner's April 29, 2020 submission, or any other public filing, absent a determination by the Special Master that the submitted excerpts contain material information directly relevant to the Special Master's conflict of interest findings.

the dissemination of recorded depositions, so that they were not used for improper purposes); *see also Coleman v. Ge*, Civil Action No. 94-CV-4740, 1995 U.S. Dist. LEXIS 8186, *5-11 (E.D. Pa. June, 8 1995) (finding good cause for a protective order in response to a deposition likely to cover an attorney’s strategic decisions).

Good cause also exists for an order barring counsel from making any unauthorized public disclosures or commentary regarding the DAO

Depositions and/or the Special Master proceedings. The DAO’s legitimate interests will equally be harmed by inaccurate and misleading public statements regarding the DAO Depositions and Special Master proceedings. At a recent community event political rally, Mr. Bochetto made several inaccurate and misleading statements regarding this litigation.² For example, Mr. Bochetto falsely stated, among other things, that the District Attorney has taken the position before the PCRA court that the Defendant should get a new trial, and that “years and years ago” the District Attorney used to be “one of the Defendant’s advocates.”

² Video Link:

A transcript of Mr. Bochetto’s comments at the January 29, 2020 rally is also attached as Exhibit A.

Both these statements are indisputably false.³ Given Mr. Bochetto's willingness to misstate record facts in an attempt to garner support for his personal political agenda, the DAO has grave concerns that Mr. Bochetto may seek to exploit the DAO Depositions, distort their contents, and misrepresent the Special Master proceedings in future public statements. Where, as here, the information at risk involves privileged and confidential information and the pretrial phase of the proceedings do not implicate First Amendment concerns, a protective order barring any unauthorized disclosures and commentary is warranted. *See Stenger*, 554 A.2d at 959-60; *see also Dobson v. Milton Hershey & Sch. Trust*, Civil Action No. 1:16-CV-1958, U.S. Dist. LEXIS 182057, *12-*13 (M.D. Pa., Oct. 22, 2019).

³ The record on both points is quite clear. The DOA has not supported the Defendant's request for a new trial. *See* the Commonwealth's Response to Defendant's Motion for Remand to the PCRA Court to Consider Newly-Discovered Evidence, attached as Exhibit B. Nor has the District Attorney ever represented the Defendant.

CONCLUSION

29. For all the above reasons, the DAO respectfully requests that the Special Master issue the proposed protective order.

Respectfully submitted,

/s/ David Smith

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Dated: April 17, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ David Smith

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The Office of the District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020, true and correct copies of the foregoing document, exhibits in support, and a proposed order were filed and served via e-mail to the Special Master, with copies to all counsel:

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disclosure, including the April 29, 2020 filing, absent an order of the Court or Special Master authorizing such public disclosure; and

3. The parties and their counsel are to refrain from making public statements or commentary regarding the depositions authorized in the April 7 Order and/or the Special Master proceedings.

BY THE COURT:

Hon. John M. Cleland

Exhibit A

00001: 01
02 Transcription of:
03 "Allagesproducti ons-9c1a0d. zip - 00: 05: 28"
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06 IN RE: SOUTH PHILLY RALLY
07 SPEAKER: GEORGE BOCHETTO
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00002: 01 SPEAKER: Okay. Mr. George Bochetto.
02 GEORGE BOCHETTO: You know, in all the
03 recommendations and suggestions that have
04 made -- been made tonight so far about how to
05 improve the safety of our communities, one big
06 one has been overlooked and hasn't been
07 mentioned. We must get rid of Larry Krasner.
08 He is derelict in his duty and he is a traitor
09 to his office.
10 I'm going to tell you one little story.
11 I'm going to tell you one little story so that
12 when you talk to your fellow neighbors and you
13 talk to your elected representatives, you can
14 have some facts in hand. Let me tell you a
15 little bit about what's been happening lately
16 in the Daniel Faulkner/Mumia Abu-Jamal case.
17 Thirty-two years ago after confessing and after
18 overwhelming evidence of his guilt, a jury of
19 his peers found him guilty. For the last 32
20 years he's taken on every civil rights and
21 left-wingnut lawyers who have filed appeal
22 after appeal. State courts, federal courts,
23 all the way to the Supreme Court, and every
24 single time his guilt has been overwhelmingly
25 confirmed.

00003: 01 Let me tell you what's going on now that
02 Larry Krasner is the D.A. You won't believe
03 this story. It's not even a B movie. Larry
04 says he was in the 18th floor when he got
05 elected looking for some office furniture that
06 was stored up there so he could equip his
07 office, and lo and behold he saw a box in the
08 storage marked "Faulkner." And he looked in
09 the box and he saw a letter that was written to
10 the District Attorney's Office after the trial,
11 after the conviction, after everything was done
12 by one of the witnesses who said, "By the way,
13 now that I've testified, can I get reimbursed

14 my taxi fare and my parking fees?"
15 That was the letter. There was no
16 response to the letter. Nobody promised him
17 anything. One single piece of paper. Larry
18 seized upon that letter, turned it over to the
19 seventh set of attorneys for Mumi a Abu-Jamal
20 who have now filed a petition for a new trial
21 Because critical evidence was withheld from the
22 defense that this witness after the trial asked
23 for his taxi fare to be reimbursed to him. Not
24 only did he turn it over in the courthouse,
25 Larry, when appearing in front of the judges,
00004: 01 stated, "I agree, he ought to get a new trial."
02 Bullshi t.

03 On behalf of Maureen Faulkner, we filed a
04 petition in the State Supreme Court to remove
05 Larry Krasner from the Mumi a Abu-Jamal case.
06 That petition is still pending. We hope to get
07 it -- an argument in front of the Supreme Court
08 any day now. We think the evidence is
09 overwhelming that Larry Krasner is absolutely
10 ignoring his appointed responsibilities as
11 district attorney.

12 And, you know, if Larry Krasner wants to
13 be the advocate for Mumi a Abu-Jamal, and he was
14 years and years ago, if he wants to be the
15 advocate, great. Have at it, but don't be our
16 district attorney. The district attorney is
17 supposed to support and enforce the law, not
18 find ways to avoid it, and that's what's going
19 on. I could tell you case after case.

20 There's just a recent article on a double
21 homicide perpetrator whose convi cti on has been
22 overturned by Mr. Krasner because 10 years
23 before he was involved in the homicide he was
24 abused as a child. That's what we're dealing
25 with. That's the Williams case. That's the
00005: 01 Williams case.

02 Folks, the number one thing you can be
03 doing beyond supporting your police here -- and
04 the police do do a great job, but they're under
05 attack by Krasner's office. They may not say
06 it, but I can tell you firsthand they're under
07 attack by Krasner's office. The most important
08 thing you can do is organize yourselves and get
09 rid of Krasner.

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11 (End of recording.)
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00006: 01

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I, ERINN GREEN, Professional Court Reporter/Transcriptionist, do hereby certify that I was authorized to transcribe the foregoing recorded proceeding, and that the transcript is a true and accurate transcription of my shorthand notes, to the best of my ability, taken while listening to the provided recording.

I further certify that I am not of counsel or attorney for either or any of the parties to said proceedings, nor in any way interested in the events of this cause, and that I am not related to any of the parties thereto.

Dated this 9th day of April, 2020.

ERINN L. GREEN, Professional Court Reporter
Notary Public, State of Florida
Commission No.: GG950705
Expires: January 23, 2024

Exhibit B

**IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA : 290 EDA 2019
Appellee

V. :

**WESLEY COOK, a/k/a MUMIA ABU-JAMAL :
Appellant**

**COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR
REMAND TO THE PCRA COURT TO CONSIDER
NEWLY-DISCOVERED EVIDENCE**

The Commonwealth does not oppose defendant's motion for a remand to the PCRA court for defendant to present newly-discovered evidence, and in support of this position, respectfully states the following:

1. On December 27, 2018, the PCRA court (the Honorable Leon W. Tucker) entered an order, pursuant to defendant's fifth PCRA petition, reinstating defendant's right to appeal from prior orders dismissing his first four PCRA petitions.
2. Pursuant to the PCRA court's order, defendant filed the present *nunc pro tunc* appeal from the 1997, 2001, 2005, and 2009 orders denying relief on his first four PCRA petitions.
3. While defendant's fifth PCRA petition was pending below, the PCRA court judge directed the Commonwealth to produce for his review the complete file

of the Philadelphia District Attorney's Office regarding the prosecution of this case. The Commonwealth subsequently provided the PCRA court judge with 32 boxes that it believed was the complete file for this case.

4. On December 28, 2018, after the PCRA court had reinstated defendant's appellate rights, the Commonwealth discovered six additional boxes containing documents relating to this case. These six boxes had been stored in a different location than the 32 boxes previously turned over by the Commonwealth to the PCRA court. The Commonwealth informed the PCRA court judge that it had discovered these additional six boxes, and it made them available to defense counsel for review.

5. On September 3, 2019, defendant filed his appellate brief in this Court for his reinstated appeals. On that same date, he also filed a motion for a remand to the PCRA court to consider what he contends is newly-discovered evidence he found while reviewing the contents of the six boxes. This alleged newly-discovered evidence consists of a letter written by an eyewitness to the trial prosecutor asking about money supposedly owed to him; handwritten notes defendant contends show the prosecutor kept track of the races of the prospective jurors during jury selection; and documents relating to the prosecution of a second eyewitness's prostitution cases. Defendant states that these newly-discovered documents

relate to the claims he has raised in the present appeal and asks this Court to remand the case to the PCRA court so it may consider this new evidence.

6. Without, at the present time, taking a position on the relevance and/or significance of these newly-discovered documents, the Commonwealth does not oppose a remand so that the documents may be presented to the PCRA court.

WHEREFORE, the Commonwealth does not oppose defendant's motion for a remand to the PCRA court for the presentation of newly-discovered evidence.

Respectfully submitted,

/s/ Grady Gervino

GRADY GERVINO
Assistant District Attorney