

IN THE SUPERIOR COURT OF PENNSYLVANIA

WILLIAM H. COSBY, JR.,	:	
Applicant	:	
	:	DOCKET NO: 3314 EDA 2018
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
Respondent	:	

**APPLICATION FOR BAIL PENDING APPEAL
PURSUANT TO Pa.R.A.P. 1762(a)**

Applicant, William H. Cosby, Jr. (“Applicant” or “Mr. Cosby”), by and through his attorneys, Brian W. Perry and Kristen L. Weisenberger of Perry Shore Weisenberger & Zemlock, files this Application for Bail Pending Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1762(a).¹ In support of his application, Mr. Cosby states:

INTRODUCTION

1. Mr. Cosby has been incarcerated for nearly seven months, yet review of his legally infirm and unsupported conviction by this Honorable

¹ Applicant previously filed a Petition for Review Pursuant to Pennsylvania Rule of Appellate Procedure 1762(b). That Petition was denied on October 31, 2018, before Appellant’s Notice of Appeal was filed. The procedural posture is now significantly different given, among other things, the timely filing of Applicant’s Notice of Appeal, and the instant application is authorized pursuant to Pennsylvania Rule of Appellate Procedure 1762(a). Moreover, there are new facts warranting consideration by this Court, which justify the present Application.

Court is being improperly delayed by the lower court, which has failed to file a timely opinion pursuant to Pa.R.A.P. 1925(a)(the "1925(a) Opinion"), thereby stalling appellate review of his conviction and sentence.

2. The unreasonable delay by the lower court in filing his 1925(a) Opinion has prejudiced the 81-year-old Mr. Cosby, who raises a number of meritorious claims of error that are likely to prevail on appeal and result in either an outright vacation of Mr. Cosby's conviction or, at a minimum, a new trial.

3. Pursuant to Pa.R.A.P. 1762(a), Mr. Cosby now respectfully asks this Court to grant him bail pending appeal. Bail is justified under the circumstances given Mr. Cosby's advanced age and the strong likelihood that his conviction will not stand on appeal. Furthermore, the record below is devoid of any evidence demonstrating that Mr. Cosby, who is legally blind, is currently a danger to the community. Moreover, Mr. Cosby's right to have his appeal heard in a timely manner by this Court is being trampled by the lower court's inordinate delay in issuing his 1925(a) Opinion.

4. While Mr. Cosby recognizes that bail applications are ordinarily brought first in the trial court, he seeks relief from this Court because the trial judge below suffers from a disabling conflict of interest that would

render a bail application in the trial court futile. See Ex. 1, attached (Petition for Review Pursuant to Pa.R.A.P. 1762(b)(2), 121 EDM 2018 (Oct. 23, 2018) (hereinafter “Petition for Review”)) at ¶¶ 7, 23, & 27(a)-(b).²

5. Mr. Cosby, like any other citizen, deserves to have his bail application considered by a court with no interest in the outcome of the proceedings. For the reasons that follow, Mr. Cosby respectfully asks this Court to consider his bail application on the merits and grant him bail pending appeal.

PROCEDURAL HISTORY

6. On December 30, 2015, Montgomery County District Attorney Kevin Steele charged Mr. Cosby with three counts of aggravated indecent assault arising out of a single incident alleged to have occurred on or about mid-January to mid-February 2004. See Ex. 2, attached (5/26/16 MDJ Paperwork), pp. 3-4. Mr. Cosby was released on bail the same day.

7. On April 26, 2018, a jury returned a verdict of guilty on the three charged counts. See Ex. 3, attached (9/25/18 Order), p. 1. This was Mr. Cosby’s second trial. The first trial on the charges ended in a mistrial on

² The Petition for Review attached hereto as Exhibit 1 is respectfully submitted without its exhibits, the relevant portions of which are separately attached.

June 17, 2017 when the jury was unable to reach a unanimous verdict. See Ex. 4, attached (6/17/17 Order).

8. On September 25, 2018, the Court sentenced Mr. Cosby to a term of imprisonment of not less than three (3) years and not more than ten (10) years. See Ex. 3, p. 2. The trial court entered an order denying bail on September 27, 2018 and indicated that the denial of bail was based upon the lower court's determination that Mr. Cosby, who is 81 years old and legally blind, "could quite possibly be a danger to the community." Ex. 5, attached (9/25/18 Notes of Testimony), pp. 132-133³; see Ex. 6, attached (9/27/18 Order) (denying bail "for the reasons set forth on the record on September 25, 2018).

9. On October 5, 2018, Mr. Cosby filed a Post-Sentence Motion to Reconsider and Modify Sentence and for a New Trial in the Interest of Justice ("Post-Sentence Motion") in the trial court pursuant to Pa.R.Crim.P. 720(B)(1)(a)(iv)-(v) and 720(c). See Ex. 7, attached (10/23/18 Order).

³ So as to limit the burden on the Court before the record on appeal is filed, Applicant has provided excerpts of the relevant portions of the Notes of Testimony. Applicant will supplement the Application with full and complete copies of the Notes of Testimony pursuant to Pa.R.A.P. 1931 should this Court desire.

10. The trial court denied Mr. Cosby's Post-Sentence Motion on October 23, 2018. *Id.*

11. On October 23, 2018, Mr. Cosby filed a Petition for Review Pursuant to Pa.R.A.P. 1762(b)(2) in this Court, seeking review of the trial court's September 27, 2018 order denying his request for bail post-sentencing. See Ex. 1.

12. This Court entered an order denying Mr. Cosby's Petition for Review on October 31, 2018. See Order, 121 EDM 2018 (Oct. 31, 2018).

13. Mr. Cosby filed an application for Supreme Court review of this Court's October 31, 2018 order; review was denied on December 14, 2018. See Ex. 8, attached (Order, Pa. S. Ct., 166 EDM 2018 (Dec. 14, 2018)).

14. A timely notice of appeal was filed in the trial court on November 19, 2018.

15. The lower court subsequently issued an Order directing Mr. Cosby to file a statement of matters complained of on appeal pursuant to Pa.R.A.P 1925. See Ex. 9, attached (11/21/18 Order).

16. Pursuant to the lower court's order and in accordance with Rule 1925(b), Mr. Cosby filed a timely Statement of Matters Complained of on

Appeal pursuant to Pa.R.A.P 1925(b) (“1925(b) Statement”) on December 11, 2018. See Ex. 10, attached.

17. As of the date hereof, the trial court has not issued its 1925(a) Opinion.

18. This Application for Bail Pending Appeal Pursuant to Pa.R.A.P. 1762(a) now follows.

ARGUMENT

19. Mr. Cosby is entitled to bail pending appeal because: (A) although Mr. Cosby timely and promptly filed his notice of appeal and statement of matters complained of on appeal, the trial court has unreasonably delayed appellate review of Mr. Cosby’s conviction and sentence by failing to timely issue his 1925(a) Opinion; and (B) the criteria set forth in Pa.R.Crim.P. 523 weigh heavily in favor of Mr. Cosby’s release.

20. Pa.R.A.P. 1762(a) authorizes bail applications to this court, stating that the rules of criminal procedure shall govern such applications. While the rule states that an applicant should “ordinarily” bring his petition first in the trial court, this case raises unique issues that compel this Court to consider Mr. Cosby’s Application on the merits in the first instance.

21. Specifically, the trial judge labors under a debilitating conflict of interest that calls his impartiality into question. See Ex. 11, attached (Affidavit of Bruce L. Castor) at ¶¶ 17-19. As set forth in Mr. Cosby's previously filed Petition for Review, the trial judge's impartiality is reasonably questioned because of his long-standing personal and political feud with former Montgomery County district attorney Bruce Castor – arguably the most important defense witness in the case. See *id.*; see also Ex. 1 at ¶¶ 12, 27(a)-(b). Indeed, the fundamental question of whether this case could be prosecuted hinged on the trial judge's assessment of Mr. Castor's testimony.

22. However, the trial judge failed to disclose that he once accused Mr. Castor of exploiting an extra-marital affair to gain a political advantage during their contentious 1999 race for the position of Montgomery County District Attorney. See Ex. 12, attached (9/19/18 Order). The mere fact that the trial judge and Mr. Castor were once political rivals arguably should have triggered the trial judge's recusal; their history of personal and political animus demanded it. See Ex. 11 at ¶¶ 8-9, 13-15, 17-19.

23. The trial judge's contentious relationship with Mr. Castor not only gave rise to a disqualifying conflict of interest that now justifies a new

trial for Mr. Cosby (discussed below), it more immediately demands that this Court consider Mr. Cosby's bail application. Any application brought by Mr. Cosby before the seriously conflicted trial court would be futile.

A. Bail Should Be Granted Where the Trial Court Has Unreasonably Impeded Appellate Review of This Case.

24. Mr. Cosby has spent nearly seven months incarcerated while the trial court unreasonably delays appellate review by this Court of his conviction and sentence by failing to provide a timely opinion pursuant to Pa.R.A.P. 1925(a).

25. Mr. Cosby filed a timely notice of appeal on November 19, 2018 followed by a prompt 1925(b) statement. See Ex. 10. Pursuant to Pa.R.A.P. 1931, the clerk of the lower court was required to transmit the record to this Court within 60 days after the filing of the notice of appeal; insofar as the lower court has not issued its 1925(a) Opinion, however, the record has not been transmitted to this Court and review of Mr. Cosby's appeal by this Court has been unduly delayed.

26. The Due Process Clause protects against not only delays in trial; "it also guarantees a reasonably speedy appeal if the state has chosen to give defendants the right to 'attempt to demonstrate that the conviction, and the consequent drastic loss of liberty, is unlawful.'"

Commonwealth v. Greer, 554 A.2d 980, 985-86 (Pa. Super. Ct. 1989), quoting, *Burkett v. Cunningham*, 826 F. 2d 1208, 1221 (3d Cir. 1987) citing, *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). "Due Process can be denied by any substantial retardation of the appellate process." *Id.*

27. The lower court's failure to timely discharge its duties pursuant to Pa.R.A.P. 1925(a) and 1931(b) is fundamentally unfair and imperils Mr. Cosby's right to a reasonably speedy appeal. Given Mr. Cosby's advanced age, even slight delay runs the risk of depriving him entirely of his right to a final adjudication of his criminal status.

28. To ameliorate the prejudicial delay caused by the trial court's inaction, Mr. Cosby respectfully asks that this Court grant his bail application.

B. Where Mr. Cosby Raises Winning Issues on Appeal and Satisfies the Bail Criteria in Every Other Respect, Bail Pending Appeal Is Appropriate.

29. Release on appeal is uniquely appropriate in this case because Mr. Cosby's conviction and sentence are likely to be reversed and because he satisfies the release criteria set forth in Pa.R.Crim.P. 523.

30. As set forth in his Petition for Review previously filed in this Court, Mr. Cosby raises several claims of error that have a strong likelihood

of prevailing on appeal. See Ex. 1 at ¶¶ 27-28. For the purposes of this application, Mr. Cosby points this Court to only a few of those meritorious claims.

31. First, Mr. Cosby's constitutional guarantee of a fair and impartial trial was doomed from the start when the trial court concealed the judge's political and personal animus against Bruce Castor, a critical witness in the case. See Ex. 1 at ¶ 27(a)-(b); see also Ex. 11 at ¶¶ 8-9, 13-15, 17-19. In fact, the central question of whether Mr. Cosby could, as a matter of law, face prosecution for this offense turned on Mr. Castor's testimony.

32. Equally important, the trial court's acceptance or rejection of Mr. Castor's testimony dictated whether Mr. Cosby's prior deposition testimony was admissible trial evidence, a highly consequential evidentiary decision. See Ex. 1 at ¶ 27(b).

33. The trial judge's bias stemming from his personal distrust of Mr. Castor is not merely a speculative matter. Rather, the record below strongly suggests that the trial judge went out of his way to reject Mr. Castor's testimony, even on points where Mr. Castor's testimony was corroborated, unrefuted, and wholly logical.

34. Just by way of example, Mr. Castor testified that after conducting an investigation into the complainant's allegations in 2005, he promised Mr. Cosby's defense counsel that his office would not prosecute Mr. Cosby in connection with those allegations. See Ex. 13, attached (2/2/16 Notes of Testimony), p. 240, lines 12-25. Mr. Castor testified that he intended for that promise to bind the Commonwealth, and that as a result, it was his view that Mr. Cosby no longer enjoyed his Fifth Amendment privilege against self-incrimination. *Id.*; see Ex. 11 at ¶¶ 19-20.

35. Mr. Cosby's civil attorney at the time, John Schmitt, testified at a pre-trial hearing that, based on Mr. Castor's promise not to prosecute, he advised Mr. Cosby to answer questions related to the complainant's allegations at a civil deposition. See Ex. 14, attached (2/3/16 Notes of Testimony), pp. 10-13. Mr. Schmitt testified in no uncertain terms that if he harbored any concerns that the criminal prosecution could be reopened, he "wouldn't have let him [Mr. Cosby] sit for a deposition." *Id.* at p. 14, lines 6-10.

36. The trial court credited Mr. Schmitt's testimony, acknowledging that he had advised Mr. Cosby to give deposition testimony because the Montgomery County district attorney had promised not to prosecute. See

Ex. 15, attached (12/5/16 Findings of Fact), p. 3, ¶ 21. However, in direct contradiction of this finding, the trial court ultimately concluded that Mr. Castor had made no such promise and that his testimony on this point was not believable. See Ex. 14, pp. 306-307 (denying habeas corpus petition based on a review of “all testimony of witnesses with credibility determinations being an inherent part of [the] ruling”); see also Ex. 16, attached (2/4/16 Order).

37. These findings are simply incompatible. By crediting Mr. Schmitt’s testimony, the trial judge had no choice but to credit Mr. Castor’s testimony. Put differently, to conclude that Mr. Castor did *not* make a non-prosecution promise to Mr. Cosby’s attorney, the trial court not only had to find that the former District Attorney testified untruthfully, but that Mr. Cosby’s veteran civil attorneys recklessly green-lit his deposition without any concern or understanding of its implications on a future criminal prosecution, and then took the stand and gave perjured testimony on the matter. Clearly no evidence supported such a finding, and the trial court made no such finding.

38. The trial judge’s inconsistent and illogical factual findings are only reasonably explained by his personal bias against Mr. Castor.

Because the trial judge failed to recuse himself despite knowing that he would be called on to assess the credibility of a man he once accused of engaging in underhanded political tactics (see Exs. 11 & 12), Mr. Cosby was deprived of a fair and impartial trial. This meritorious issue has a strong chance of winning on appeal as there can be no confidence in a verdict where the trial judge has a personal stake, actual or perceived, in the outcome of the proceedings.

39. As set out in detail in his Petition for Review, the excessive delay in bringing charges against Mr. Cosby deprived him of some of his best evidence, namely testimony from his defense attorney, Walter Phillips, who would have confirmed that Bruce Castor expressly promised not to prosecute Mr. Cosby in 2005. See Ex. 1 at ¶¶ 27(a)(ii), (c). Mr. Phillips died in 2015, shortly before the current Montgomery District Attorney made good on his campaign promise to charge Mr. Cosby. *Id.*; see Ex. 13, p. 100, lines 11-23; Ex. 14, p. 15, lines 13-17.

40. The trial court professed skepticism of Mr. Castor's claim that he promised never to prosecute Mr. Cosby, in part, because Mr. Castor was the only percipient witness who testified. See Ex. 14, pp. 269-270 (“[Y]our whole argument is premised that this Court believes everything that

Mr. Castor said because he's the only one testifying as to a promise. He's the only one. It's not -- Mr. Phillips isn't here. You weren't in the room, Mr. McMonagle. There's no other witness to the promise."'). However, had the prosecution brought charges against Mr. Cosby even one year earlier, Mr. Phillips could have, and unquestionably would have, testified consistent with Mr. Castor's testimony, making it unlikely, if not impossible, for the trial court to reject Mr. Castor's contention that he promised never to prosecute Mr. Cosby.

41. It is simply undebatable that had the prosecution been brought in a timely fashion, Mr. Cosby would have prevailed on his Petition for a Writ of Habeas Corpus, because he would have had the benefit of Mr. Phillips' testimony.

42. Third, the trial court blatantly placed its thumb on the scale of justice in favor of the prosecution when it permitted five women (and a de facto sixth through Mr. Cosby's wrongfully admitted deposition testimony) to testify about inappropriate sexual encounters with Mr. Cosby that it had previously ruled inadmissible. See Exs. 17 & 18, attached (2/24/17 Order and 3/15/18 Order, respectively). The trial court inexplicably reversed itself on this critical issue without explanation *after* the prosecution was

unsuccessful at securing a conviction based on the complainant's testimony and only one 404(b) witness.

43. The trial judge's unexplained about-face on this issue not only provides independent grounds for reversal but constitutes further evidence that he had an interest in seeing Mr. Cosby convicted.

44. The trial court effectively directed a verdict against Mr. Cosby when it decided to permit the prosecution to conduct five separate mini-trials related to other conduct alleged to have occurred decades ago – conduct that Mr. Cosby was powerless to meaningfully defend against given the passage of time.

45. While the prosecution touts this verdict as justice for the complainant, in reality the verdict merely represented the jury's disdain for Mr. Cosby's character – not his guilt on the charged offenses.

46. The trial court's admission of excessive "bad act" evidence effectively stripped Mr. Cosby of his presumption of innocence and encouraged the jury to convict Mr. Cosby based on the view that he had escaped responsibility for prior misdeeds rather than on evidence supporting the charged offenses – all in contravention of the presumption of

innocence, the burden of proof, and the well-established prohibition on the admission of propensity evidence.

47. The issues identified above do not constitute all of Mr. Cosby's meritorious claims on appeal, but are representative of the meritorious claims that Mr. Cosby has raised on appeal, and are likely to lead to a reversal of Mr. Cosby's conviction. See Ex. 10. These meritorious claims warrant that Mr. Cosby be granted bail pending appeal.

48. In addition to the strength of the claims on appeal, Mr. Cosby satisfies all of the other release criteria enunciated by Pa.R.Crim.P. 523.

49. Mr. Cosby is 81 years old and legally blind. Evidence adduced before the lower court demonstrates that Mr. Cosby's mobility is impaired, and he "ambulates with a cane, need[ing] assistance." See Ex. 5, p. 24, line 18. In other words, Mr. Cosby is not self-sufficient but instead is completely dependent on others. *Id.* at lines 19-21. In light of these facts and the fact that Mr. Cosby is a highly recognizable figure, he is unquestionably not a flight risk. Indeed, Mr. Cosby was released on bail prior to trial and complied with all bail conditions. See Exs. 2-4. These factors strongly recommend that Mr. Cosby be released on bail pending appeal. See Pa.R.Crim.P. 523(A)(5), (6) & (7).

50. Mr. Cosby has a long history of gainful employment, is financially independent, and has strong ties to the community. He enjoys the full support of his wife and children, all of whom will provide the support necessary to ensure his compliance with all bail conditions as they have done previously. See Pa.R.Crim.P. 523(A)(2), (3) & (4).

51. Despite the Commonwealth's concerted effort to cast Mr. Cosby as a repeat offender through unproven, decades-old allegations, the fact remains that he has no prior criminal record, another factor that weighs in favor of release on bail. See Pa.R.Crim.P. 523(A)(7)

52. Importantly, the record is devoid of any evidence that Mr. Cosby is a danger to the community, notwithstanding the trial court's unsupported comments to the contrary. Mr. Cosby was evaluated by Dr. Timothy Foley, Ph.D., a licensed psychologist, who concluded that given Mr. Cosby's age and health, his risk of recidivism is "extraordinarily low." See Ex. 5, p. 25, lines 8, 14-16. Dr. Foley explained, "[s]ex offense recidivism declines as a function of aging after 70 – becoming virtually negligible" *Id.* at lines 11-13. The absence of any known sexual misconduct over that past 15 years further supports Dr. Foley's opinion that Mr. Cosby is unlikely to reoffend. *Id.* at lines 13-14.

53. In short, Mr. Cosby raises meritorious issues on appeal. This Court should grant Mr. Cosby bail in light of his age, health, and high chances of success on appeal. Furthermore, bail is appropriate where the trial court has refused to timely issue his 1925(a) opinion, prejudicing Mr. Cosby's right to a reasonably timely appeal.


WHEREFORE, Mr. Cosby respectfully requests that this Honorable Court grant bail pending appeal. Alternatively, to the extent that this Court believes that it cannot grant this Application without additional fact-finding, this Court should grant a hearing on this Application.

Respectfully submitted,

**PERRY SHORE WEISENBERGER &
ZEMLOCK**

 For Bwr

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Date: April 24, 2019

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 127(a) of the Pennsylvania Rules of Appellate Procedure, I hereby certified 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.

Date: April 24, 2019

 For BWP

Brian W. Perry, Esquire




Kristen L. Weisenberger, Esquire


VERIFICATION

I do hereby swear and affirm that the facts and matters set forth in the within Petition for Review are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements made therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: April 24, 2019



Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire

EXHIBIT 1

IN THE SUPERIOR COURT OF PENNSYLVANIA

WILLIAM H. COSBY, JR.,
Petitioner

:
:
: DOCKET NO.: _____
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:
:

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

PETITION FOR REVIEW PURSUANT TO Pa.R.A.P. 1762(b)(2)

The Petitioner, William H. Cosby, Jr. (the "Petitioner" or "Mr. Cosby"), by and through his attorneys, Brian W. Perry and Kristen L. Weisenberger, of Perry Shore Weisenberger & Zemlock, files this Petition for Review Pursuant to Pennsylvania Rule of Appellate Procedure 1762(b), from the determination and order of the trial court entered on September 27, 2018, denying Mr. Cosby's request for bail post-sentencing and, in support hereof, states as follows:

JURISDICTIONAL STATEMENT

1. This Court has authority to hear this Petition pursuant to Pa.R.A.P 1762(b).

2. Procedurally, after a one-and-a-half day hearing, on September 25, 2018, Mr. Cosby was sentenced to a term of incarceration of not less than three (3) years nor more than ten (10) years. See Notes of SVP/Sentencing Hearing dated September 25, 2018, p. 120. Relevant portions of the Notes of Sentencing Hearing are attached hereto at Exhibit "1." An oral motion for bail was made to the lower court immediately following sentencing. Id., p. 120. The lower court denied the motion and Mr. Cosby was immediately incarcerated. Id., pp. 124-127; 131-133. The Order denying bail was entered on September 27, 2018. A true and correct copy of the Order denying bail is attached as Appendix "A." On October 2, 2018, pursuant to Pa. R. Crim. P. 720(B) and 720(C), a timely Post-Sentence Motion to Reconsider and Modify Sentence and for a New Trial in the Interest of Justice (the "Post-Sentence Motion") was filed with the lower court. Insofar as the Post-Sentence Motion is pending and an appeal has not yet been filed, as it is not ripe, this Court has authority to hear this Petition pursuant to Pa.R.A.P. 1762(b).

PARTIES

3. The Petitioner is William H. Cosby, Jr., who is currently incarcerated at the State Correctional Institution at Phoenix.

4. The Respondent is the Commonwealth of Pennsylvania acting by and through the District Attorney of Montgomery County.

DETERMINATION SOUGHT TO BE REVIEWED

5. Mr. Cosby seeks review of the determination and Order of Judge Steven T. O'Neill of the Court of Common Pleas of Montgomery County denying the motion for bail that Mr. Cosby's counsel presented to the lower court immediately subsequent to sentencing. The lower court placed his reasons for denying bail on the record during the sentencing hearing on September 25, 2018. The Order denying bail, which was entered and docketed on September 27, 2018, reflects that bail was denied "for the reasons set forth on the record on September 25, 2018." See Appx. "A."

6. In addressing Mr. Cosby's request for bail, the lower court stated that his reasons for denying bail were the same as those that he relied upon in imposing sentence. See Ex. 1, p. 132. In short, the lower court stated that Mr. Cosby was convicted of a serious crime and that "[t]he nature of the crime and what this Court has before me indicates that he could quite possibly be a danger to the community." Id.

7. As set forth more fully below, the lower court failed to disclose his contentious relationship with a material witness on the critical issue of whether the prosecution against Mr. Cosby could even proceed, the circumstances of which should have compelled Judge O'Neill's recusal from the case. Accordingly, the lower court's denial of bail on the purported basis that Mr. Cosby was convicted of a crime for which he never should have been prosecuted was a clear abuse of discretion.

8. Additionally, there are other significant appellate issues that should result in a reversal of the conviction. Specifically, the lower court wrongly admitted deposition testimony Mr. Cosby gave pursuant to District Attorney Castor's promise not to prosecute, allowed the prosecution to proceed despite a prejudicial twelve-year delay in filing charges, and allowed five women offered by the prosecution to testify regarding uncharged conduct. These errors denied Mr. Cosby his constitutional rights and warrant reversal of the conviction.

9. Moreover, there is absolutely nothing in the record that would support any conclusion that Mr. Cosby, who is 81 years old and legally blind, is a danger to the community.

**GENERAL STATEMENT OF THE OBJECTIONS TO THE ORDER OR
OTHER DETERMINATION UNDER REVIEW**

I. PROCEDURAL BACKGROUND

10. On December 30, 2015, Montgomery County District Attorney Kevin Steele charged Mr. Cosby with three counts of aggravated indecent assault. As set forth in the criminal complaint, each count was based upon purported conduct alleged to have occurred "on or about mid-January to mid-February 2004" at a residence Mr. Cosby owns in Cheltenham, Pennsylvania. The complainant had lodged the allegations against Mr. Cosby more than a decade earlier, in January 2005. At the time that the allegations were lodged, the Montgomery County District Attorney was Bruce Castor, who, as more fully set forth below, thoroughly investigated the allegations and thereafter determined and promised, on behalf of the Commonwealth, that Mr. Cosby would never be prosecuted for them. District Attorney Castor's promise not to prosecute was made for the purpose of compelling Mr. Cosby to testify in an anticipated deposition in civil litigation against the complainant without invoking his Fifth Amendment privilege against self-incrimination.

11. On December 30, 2015, bail was set in the amount of \$1,000,000.00, ten percent (10%) acceptable. Mr. Cosby posted bail and

was released. On January 11, 2016, Mr. Cosby filed a Petition for Writ of Habeas Corpus through which Mr. Cosby sought dismissal of the charges based on the binding promise not to prosecute made by District Attorney Castor.

12. According to a sworn and notarized affidavit of Mr. Castor, Judge O'Neill chose to assign this particular criminal case to himself. Attached hereto as Exhibit "4" is the Affidavit of Bruce Castor, dated October 20, 2018. The lower court should have known that by assigning the matter to himself he would preside over a hearing in which Mr. Castor would be called as the primary witness on the key issue of whether this prosecution could proceed. As set forth more fully below, during the subsequent hearing at which Mr. Castor testified, the lower court took questioned Mr. Castor and, in Mr. Castor's words, proceeded to treat Mr. Castor with "tremendous animosity" before determining that Mr. Castor lacked credibility. See Ex. 4 ¶17. At no time, either before or after the hearing, did the lower court disclose his contentious relationship with Mr. Castor.

13. Subsequently, on May 24, 2016, a preliminary hearing was held before Magisterial District Judge Elizabeth McHugh and all charges were held for court.

14. On July 13, 2016, a three-count Criminal Information was filed charging Mr. Cosby with aggravated indecent assault pursuant to 18 Pa.C.S. §3125(a)(1)(Count 1); aggravated indecent assault pursuant to 18 Pa.C.S. §3125(a)(4)(Count 2); and aggravated indecent assault pursuant to 18 Pa.C.S. §3125(a)(5)(Count 3).

15. Shortly before trial, the prosecution filed a motion to admit the testimony of more than a dozen accusers about misconduct they claim occurred decades ago. On February 24, 2017, the lower court entered an order allowing the testimony of only one "404(b) witness," whose accusations were most recent in time, yet still more than two decades old. On May 22, 2017, a jury was selected, and trial commenced on June 5, 2017. On June 17, 2017, however, the lower court declared a mistrial as the jury could not reach a verdict after six days of deliberations.

16. Shortly before start of the second trial, the prosecution again filed a motion seeking to admit the testimony of more than a dozen "404(b) witnesses." This time, the lower court, without explanation and in stark

contrast to his ruling in the first trial, entered an order allowing five such witnesses to testify. A jury was subsequently selected, and trial commenced on April 9, 2018. Following testimony from not only the five "404(b) witnesses," but also additional witnesses called by the prosecution to bolster their credibility, the jury returned a verdict of guilty on the charges on April 26, 2018.

17. Subsequent to the return of the verdict, Mr. Cosby's bail was continued, but modified to provide that he be confined to his Pennsylvania home pending sentencing.

18. As noted above, the lower court, on September 25, 2018, sentenced Mr. Cosby on Count One of the Criminal Information to, *inter alia*, a term of incarceration of not less than three (3) nor more than ten (10) years imprisonment. See Ex. "1," p. 120. The lower court determined that the verdicts on Counts Two and Three merged with Count One. Id., pp. 106-107, 120. The lower court also declared, immediately prior to imposing sentence, that Mr. Cosby was a "sexually violent predator" within the meaning of 42 Pa.C.S. §9799.58(e)(3).

19. As reflected above, the oral motion for bail was denied, and the Order concerning the same was entered on September 27, 2018.

**OBJECTIONS TO THE DETERMINATION AND THE REASONS WHY
POST-SENTENCING BAIL SHOULD BE GRANTED**

20. The Pennsylvania Rules of Criminal Procedure address the provision of bail after a finding of guilt. In relevant part, Pa.R.Crim.P. 521(B)(2) provides:

...when the sentence imposed includes imprisonment of 2 years or more, the defendant shall not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

21. It is beyond dispute that Pa.R.Crim.P. 521(B)(2) provides the lower court with the discretion to impose bail post-sentencing. Moreover, this Court has recognized that an abuse of discretion will occur where the record discloses that "...the trial court exercised manifestly unreasonable judgment or based its decision on ill will, bias or prejudice...." *Commw. v. Heckman*, 66 A.3d 765, 768 (Pa. Super. 2013), quoting *Commw. v. Ruby*, 838 A.2d 786, 788 (Pa. Super. 2003).

22. The record in this case reflects that the lower court's decision to deny Mr. Cosby bail post-sentencing was a clear abuse of discretion.

23. Prior to sentencing, Mr. Cosby's counsel filed a motion for recusal based on the lower court's undisclosed contentious relationship

with Mr. Castor, and sought a hearing regarding the same in which the testimony of percipient witnesses, including Mr. Castor, would be introduced. The lower court denied the motion without a hearing in a Memorandum Opinion and Order dated September 19, 2018.

24. In support of the request for bail, Mr. Cosby's counsel advised the lower court that an appeal was imminent and that there were substantial legal issues, including recusal, to be raised on appeal. See Ex. 1, pp. 120-121, 124, 127-128. The lower court summarily dismissed this fact.

25. Moreover, the record reflects that, at age 81 and legally blind, Mr. Cosby is a threat to no one. He was out on bail prior to sentencing, complied with his conditions of bail, and appeared for all required court proceedings.

26. The record demonstrates both that bail pending the determination of Mr. Cosby's Post-Sentence Motion and, if necessary, pending appeal is warranted, and that the judge abused his discretion by not granting the same. The above issues will be addressed below, *seriatim*.

II. NUMEROUS ERRORS BY THE LOWER COURT VIOLATED MR. COSBY'S CONSTITUTIONAL RIGHTS AND COMPEL THE CONCLUSION THAT THE CONVICTION SHOULD BE REVERSED AND THE CASE DISMISSED OR, AT A MINIMUM, THAT A NEW TRIAL IS WARRANTED. THE LOWER COURT SUMMARILY DISMISSED THIS ARGUMENT, EFFECTIVELY EXERCISING NO DISCRETION ON BAIL.

27. The issues that are anticipated to be raised on appeal are so strong as to warrant the provision of post-sentencing bail. These issues include, but are not limited to, the following:

a. The lower court failed to disclose his contentious relationship with a material witness on a critical issue concerning whether the prosecution against Mr. Cosby could even proceed, the circumstances of which compelled his recusal from this case.

i. A legitimate and significant issue exists concerning the failure of the lower court to disclose a contentious relationship that he had with a material witness in this case. That personal history created a bias, or at the very least, a perception of bias, so significant as to call into question the impartiality of the lower court and its ability to fairly decide dispositive issues in this case. That bias, whether real or perceived, also mandated the lower court's recusal from, at a minimum, deciding any motions predicated, even in part, upon

the testimony of this critical witness. Specifically, and as referenced above, a Petition for Writ of Habeas Corpus was filed seeking the dismissal of the charges based on District Attorney Castor's 2005 promise that he would not prosecute Mr. Cosby. At a hearing on the Petition, Mr. Castor testified that it was his intent to bind the Commonwealth to never prosecute Mr. Cosby. See Notes of Testimony, dated February 2, 2016, at p. 63, lines 20-25; p. 63, attached hereto as Exhibit "2." Mr. Castor made the promise not to prosecute in order to place Mr. Cosby in the position of being precluded from invoking his Fifth Amendment rights in a deposition in the complainant's civil suit. Id., pp. 63-65. Indeed, Mr. Castor testified that "...I made the decision as the sovereign that Mr. Cosby would not be prosecuted no matter what. As a matter of law, that then made it so that he could not take the Fifth Amendment ever as a matter of law." Id., p. 64, lines 17-20.

ii. Then District Attorney Castor advised Mr. Cosby's counsel, Walter Phillips, of his promise not to prosecute

Mr. Cosby. Id. at pp. 64-67.¹ In reliance on that promise, Mr. Cosby's counsel allowed Mr. Cosby to be deposed in the civil suit. See Notes of Testimony dated February 3, 2016, pp 10-11; 13-14 (Testimony of John Patrick Schmitt, counsel to Mr. Cosby). Relevant portions of Attorney Schmitt's testimony are attached hereto as Exhibit "3." Indeed, Attorney Schmitt, an experienced 36-year practitioner, testified, "Mr. Cosby sat for a deposition. We did that knowing that the criminal litigation—that the criminal matter had been concluded and could not be reopened." Id., p. 13, lines 18-21. Because of District Attorney Castor's binding promise not to prosecute, Mr. Cosby could not, and did not, invoke his rights under the Fifth Amendment to the United States Constitution. Consistent with District Attorney Castor's promise, and all parties' understanding of that promise, Mr. Cosby was not prosecuted over the next decade, including the two terms Risa Ferman served as District Attorney from 2008 through 2016.

¹ Mr. Phillips died in February 2015.

iii. Indeed, Mr. Cosby was not prosecuted until First Assistant District Attorney Kevin Steele decided to make the matter an issue in his 2015 campaign for election against Mr. Castor, who had decided to again run for District Attorney. Campaigning on a promise to prosecute Mr. Cosby, Mr. Steele ultimately won the election and charged Mr. Cosby for the very conduct for which he had been promised he would never be prosecuted, a promise on which Mr. Cosby had expressly relied, to his detriment.

iv. Although the lower court was well aware that Mr. Castor was a critical and material witness to the existence of this promise not to prosecute, the lower court did not disclose the contentious relationship that he had with Mr. Castor. With respect to that relationship, see Ex. "4", which chronicles the strained relationship between him and the lower court. In short, Mr. Castor and Judge O'Neill were political rivals in 1999, over the Office of the District Attorney. Id., ¶1. During the campaign for the party endorsement, Judge O'Neill accused Mr. Castor of engaging in conduct during a political debate that sought to

exploit a personal and private family issue. Id., ¶¶2-8.

Specifically, Mr. Castor and Judge O'Neill debated each other at an event where a female Assistant District Attorney with whom Judge O'Neill had an extramarital affair was present in the front row. Id., ¶¶2-3. According to Mr. Castor's sworn affidavit, Judge O'Neill seemed "distracted, unfocused, and nervous" during that event. Id., ¶2. The next morning, Judge O'Neill's campaign manager called Montgomery County's Republican Party Chairman to complain that placing the female prosecutor in the front of the debate to distract Judge O'Neill was "playing dirty politics." Id., ¶3. Later, while leaving a subsequent political event, Mr. Castor encountered Judge O'Neill and his wife. Id., ¶5. Judge O'Neill, in front of several witnesses, angrily accused Mr. Castor and his supporters of "running a smear campaign and trying to ruin his marriage and life." Id., ¶¶5, 8. Mr. Castor won the Republican Party endorsement for DA, causing Judge O'Neill to withdraw his name from consideration for the election. Id., ¶6. Mr. Castor believes that Judge O'Neill has never forgiven him or his

political supporters for using Judge O'Neill's marital infidelity as a "smear campaign," and that Judge O'Neill's subsequent conduct confirms that belief. Id., ¶¶8-9. Mr. Castor describes his relationship with Judge O'Neill over the next sixteen years as "strained and tense." Id., ¶9. Judge O'Neill was appointed to the bench in 2002. Id., ¶10. From 2002 until 2008, while Mr. Castor served as DA, he does not recall ever personally appearing before Judge O'Neill, and would have assigned another prosecutor to appear before Judge O'Neill "so as to avoid being put in a position where Judge O'Neill could embarrass or humiliate me and potentially damage the prosecution." Id., ¶11. It was after Mr. Castor secured the endorsement of the party and was thereafter elected as the District Attorney in 1999 that he investigated the allegations lodged by the complainant. Had then Attorney O'Neill won the endorsement and been elected, he would have been the District Attorney that would have investigated these allegations.

v. Additionally, while serving as District Attorney and, thereafter, Montgomery County Commissioner from 2008 to

2016, Mr. Castor was placed in the position where he initially opposed certain court-related programs supported and proffered by Judge O'Neill. Id., ¶¶13-14. As the attached Affidavit reflects, Mr. Castor felt and believed that Judge O'Neill harbored ill will toward him. See e.g. Id., ¶¶8-9, 17.

vi. Despite this adverse relationship, which was so strained as to warrant recusal from the case, the lower court never disclosed the same to Mr. Cosby or his counsel. Ironically, according to Mr. Castor's sworn affidavit, the lower court chose to assign the case to himself, thereby putting himself in a position to make a decision regarding Mr. Castor's credibility. Id., ¶15.

vii. A review of the transcript of the hearing on the Petition for Writ of Habeas Corpus reflects that despite thorough cross-examination from a seasoned prosecutor, the lower court, *sua sponte*, repeatedly questioned Mr. Castor on his promise not to prosecute Mr. Cosby. See e.g., Ex. 2 at pp. 223-238. Mr. Castor felt "tremendous animosity" from Judge O'Neill just from the tone of his questions. See Ex. 4

¶17. A review of the transcript of that hearing demonstrates that the lower court was never going to find Mr. Castor credible, specifically stating, in response to arguments on the Petition by Mr. Cosby's counsel:

THE COURT: Agreed, but, again, your whole argument is premised that this Court believes everything that Mr. Castor said because he's the only one testifying as to a promise. He's the only one. It's not - - Mr. Phillips isn't here. Mr. Cosby wasn't in the room. You weren't in the room. Mr. McMonagle. There's no other witness to the promise.

So what' I'm trying to say is you've kind of - - you know, the rabbit is in the hat. And you want me at this stage to assume that, hey, the promise was made, Judge. Just accept that. And now everything else doesn't really - - and I just wanted to make sure that if there's cases in which there's - - like this where one person said they made the promise or a potential defendant claims a prosecutor made the promise, that might help, too, you know. But I just wanted to make sure that by the fact you're arguing it doesn't make the promise enforceable.

See Ex., 3, Notes of Testimony dated February 3, 2016, p. 269-270.

viii. On February 4, 2016, immediately after two days of testimony, the lower court issued an Order denying the Petition. See Ex. "5." The lower court's Order states that "...based upon review of all the pleadings and filings, the exhibits admitted at the hearing, and all testimony of witnesses, with a credibility determination being an inherent part of this Court's ruling, the Court find that there is no basis to grant the relief requested..." and that the Petition is denied. *Id.* (emphasis added). In other words, the lower court did not believe the testimony of former District Attorney Castor. According to Mr. Castor, Judge O'Neill intentionally publicly embarrassed him because he believed Mr. Castor had flaunted an affair in order to win the party's endorsement years earlier.

ix. With respect to this disclosure and recusal issue, on September 11, 2018, Mr. Cosby filed a "Motion for Disclosure, Recusal and for Reconsideration of Recusal" and a Memorandum of Law in support thereof. A copy of that Motion is attached as Exhibit "6." Through that Motion, Mr. Cosby asked the Court to make a disclosure related to Mr. Castor;

vacate the February 4, 2016 Order denying his Petition for Writ of Habeas Corpus; recuse itself from further proceedings; and reconsider the denial of a prior motion for recusal, the basis for which was independent of the instant issue. The lower court denied the Motion without a hearing.

x. On September 19, 2018, the lower court issued a Memorandum Opinion and Order Sur Recusal. A copy of the lower court's Memorandum Opinion and Order Sur Recusal is attached hereto as Exhibit "7." In that Opinion, the lower court, in addition to asserting that the Motion was untimely, goes on to characterize the claim as "unsubstantiated" and "facially meritless." According to the lower court, a hearing was "neither required nor necessary." *Id.*, p. 5. Ironically, the lower court, in its Opinion, recounts and relies on facts not of record concerning his personal history on the bench and his interactions with Mr. Castor—precisely the type of facts that should have been disclosed and explored at a hearing, and, where applicable, rebutted. *See e.g.*, Ex. 7, pp. 5-6 (the lower court discussing his tenure on the bench, and his interaction

with Mr. Castor over that period of time). Had a hearing been granted, Mr. Castor would have testified inconsistently with the trial judge's conclusions. See, Ex. 4.

xi. Given: (a) the adverse nature of the relationship between Mr. Castor and the lower court; (b) that Mr. Castor was the key witness concerning the promise that Mr. Cosby would not be prosecuted; (c) that the lower court did not disclose that adverse relationship; (d) that the lower court ostensibly made a finding that Mr. Castor was not credible; and (e) that Mr. Cosby, upon learning of the relationship, filed a motion questioning the foregoing, the lower court should have, at a minimum, held a hearing on this motion.

xii. The integrity of Mr. Cosby's criminal conviction is marred by the lower court's failure to disclose, at any time before or after denying the Petition for Writ of Habeas Corpus, the nature of his contentious relationship with Mr. Castor. Mr. Cosby had a right to have his Petition reviewed and decided by a judge who could make a decision free of bias, or even the perception of bias, where the ability to prosecute

Mr. Cosby hinged on the testimony of the 2005 District Attorney. This is a fundamental issue in the case implicating Mr. Cosby's right to Due Process of Law under the Constitution of the United States, as well as the Constitution of the Commonwealth of Pennsylvania. Further, this issue is meritorious such that Mr. Cosby should have been granted post-sentencing bail.

b. The lower court's decision to deny Mr. Cosby's "Motion to Suppress the Contents of his Deposition Testimony and any Evidence Derived Therefrom on the Basis that the District Attorney's Promise Not to Prosecute him Induced him to Waive his Fifth Amendment Right Against Self-Incrimination" (the "Motion to Suppress Deposition Testimony") was not only legally flawed, but also suffered from the same biases as set forth above.

i. Related to the above issue, the lower court also denied Mr. Cosby's Motion to Suppress Deposition Testimony. Through this Motion, Mr. Cosby sought to suppress his civil deposition testimony because it was provided in reliance on the promise by the Commonwealth, through District Attorney Castor, that Mr. Cosby would never be prosecuted for complainant's allegations. Mr. Cosby's reliance on DA Castor's

promise is evidenced by the following exchange with

Mr. Cosby's civil counsel, Attorney Schmitt:

Q: If you had known that the criminal investigation in Montgomery County could be reopened, how would it have affected your representation if at all?

A: We certainly wouldn't have let him sit for a deposition.

Ex. 3, p. 14, lines 6-10. Accordingly, and as set forth in Mr. Cosby's motion, the Commonwealth was estopped from using the deposition and any evidence obtained therefrom at trial. The lower court's ruling, in allowing the Commonwealth to use that deposition, violated Mr. Cosby's right to Due Process of Law and his right against self-incrimination as guaranteed by the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania.

ii. The two-day hearing that was held on the Petition for Writ of Habeas Corpus was offered in support of the Motion to Suppress Deposition Testimony. No further evidence was provided by either party. As noted, the lower court ultimately denied that Motion. A copy of the lower court's Findings of

Fact, Conclusions of Law and Order are attached hereto as Exhibit "8." The Findings of Fact reflect that the lower court challenged Mr. Castor's testimony and found, among other things, that "...there were numerous inconsistencies in the testimony and writings of Mr. Castor and [that the lower court] has previously ruled that credibility determinations were an inherent part of this Court's denial of the Defendants' initial 'Petition for Writ of Habeas Corpus.'" Ex. 8, Finding 40. The lower court concluded that "...there was neither an agreement nor a promise not to prosecute...." Id., Conclusion 1. Noteworthy, however, is the fact that Mr. Castor was not the only witness to testify as to the existence of the promise not to prosecute Mr. Cosby; as referenced above, Mr. Cosby's counsel, John Schmitt, also testified as to the same. See e.g., Ex. 3, pp. 10-11 (In response to a question concerning whether he had an understanding "as to whether the criminal investigation could be continued, could be re-opened," Attorney Schmitt responded, "I had an understanding that it could not be. I spoke to Mr. Phillips who indicated that, although the District

Attorney had determined there wasn't sufficient evidence to charge Mr. Cosby, that he did anticipate that there would be civil litigation. And he wanted to ensure that Mr. Cosby could be compelled to testify in a civil litigation. And, therefore, his decision was—it was an irrevocable commitment to us that he was not going to prosecute.”). See also Id. at p. 40, lines 12-16 (Mr. Schmitt testifying, “I don’t need to worry about the Fifth Amendment because there is no risk of jeopardy to Mr. Cosby because the District Attorney has agreed irrevocably that there would be no criminal prosecution.”). Although the lower court acknowledged that Mr. Phillips had told Mr. Schmitt of Mr. Castor's promise not to prosecute (See Ex. 8, Finding 21), the lower court failed to reconcile this support with his conclusion that this promise did not exist. The import of Mr. Schmitt's testimony is simply ignored by the lower court.

iii. This issue has significant merit. Not only did the lower court err in denying the Motion, he compounded his error by considering, ruling on, and ultimately denying the Motion without disclosing the strained and tense relationship he had

with Mr. Castor. The nature of that relationship mandated that the lower court disclose his bias, or perceived bias, against Mr. Castor and recuse himself from the case. The lower court's failure to do so, and his more recent refusal to conduct a hearing, warrants bail pending appeal in and of itself.

c. If the Commonwealth had the ability to prosecute Mr. Cosby, which it did not, then the inexplicable twelve-year delay in filing charges prejudiced Mr. Cosby and violated his right to Due Process of Law.

i. In addition to the issues set forth above, Mr. Cosby's Motion to Dismiss Charges Based on Deprivation of Defendant's Due Process Rights should have been granted. This is yet another meritorious issue. The complainant lodged her allegations against Mr. Cosby in January 2005. As set forth above, the Commonwealth promised not to prosecute Mr. Cosby. If no non-prosecution agreement existed, as the current District Attorney argues, then the failure to file criminal charges against Mr. Cosby over the past twelve (12) years has been inexcusable and without valid reason. Over that twelve-year period, Mr. Cosby has been substantially prejudiced insofar as: (a) a critical witness to the non-prosecution

agreement has died; (b) memories have faded; and
(c) Mr. Cosby's health has deteriorated in that he is now legally blind. For example, during an argument on the Motion to Suppress Deposition Testimony held on September 6, 2016, the lower court repeatedly pushed Mr. Cosby's counsel to identify evidence besides Mr. Castor's testimony to support the existence of the promise to not prosecute Mr. Cosby. See e.g. Notes of Testimony dated September 6, 2016, at pp. 34-40. A true and correct copy of the relevant portions of these Notes of Testimony is attached hereto as Exhibit "9." Although Mr. Cosby's counsel reminded the lower court that Walter Phillips, the criminal defense attorney who represented Mr. Cosby in 2005 when the promise was made, had died in February 2015 (prior to the criminal charges filed later that year and the new DA's position that there was no agreement to prosecute), the lower court expressed skepticism that the promise existed expressly because Mr. Castor was the only percipient witness who testified and "Mr. Phillips isn't here."

Ex. 3, p. 269. Mr. Phillips's unavailability clearly had a negative impact on the lower court.

d. The lower court infringed on Mr. Cosby's Due Process rights, violated law, and abused his discretion by allowing five women to testify that Mr. Cosby sexually assaulted them at various times during the 1980's, conduct with which Mr. Cosby was not charged, that was remote in time, and that served no purpose other than to smear Mr. Cosby.

i. Mr. Cosby also intends to challenge on appeal the lower court's decision, without any explanation, to permit five women to testify at Mr. Cosby's second trial that he engaged in inappropriate sexual contact with them. The lower court's admission of this extremely prejudicial testimony was wholly inappropriate under both the Pennsylvania Rules of Evidence and the Constitutions of the United States and the Commonwealth of Pennsylvania. That Mr. Cosby suffered severe prejudice as a result of this decision by the lower court is evidenced by the fact that, at Mr. Cosby's first trial, where only one "404(b) witness" was permitted to testify, the jury could not reach a verdict and a mistrial was declared. Subsequent thereto, and prior to the second trial, the Commonwealth filed a Motion to Introduce Evidence of 19 Prior Bad Acts from 19

different women. Other than the fact that the prosecution could not prove its case during the first trial, the prosecution offered no legitimate reason as to why the judge should increase the number of accusers permitted to testify. On March 15, 2018, the lower court issued an Order permitting five accusers beside the complainant to testify. A copy of the lower court's Order is attached hereto as Exhibit "10." That Order improperly tipped the scales in favor of conviction, and the lower court's failure to provide any justification for the change in his ruling is telling. This additional meritorious appellate issue constitutes further reason to grant bail pending appeal.

28. The issues set forth above are but some of the issues that will be raised on appeal. By identifying the above in this Petition, Mr. Cosby is not in any way waiving any other issue that is properly preserved and that he may raise on appeal. Instead, the above are illustrative of the significant and meritorious issues that exist in this case. If successful on appeal, Mr. Cosby's conviction will be reversed and vacated.

29. Given the meritorious nature of the issues to be raised on appeal, and their significance, bail is warranted. The lower court abused its

discretion by concluding otherwise. Moreover, the lower court abused its discretion by refusing to even assess whether Mr. Cosby had meritorious issues on appeal as a basis for his decision on bail.

III. GIVEN MR. COSBY'S AGE AND THE FACT THAT HE IS LEGALLY BLIND, THE LOWER COURT'S ASSERTION THAT MR. COSBY IS A RISK TO REOFFEND AND THAT IMMEDIATE INCARCERATION IN LIEU OF BAIL IS NEEDED TO PROTECT THE PUBLIC IS WITHOUT SUPPORT IN FACT.

30. As set forth above, the lower court advised that his "...reasons for the sentence is [sic] the reasons that I am relying on in denying this defendant bail." Ex. "1," p. 132, lines 14-16. The lower court noted that the crime is a sexual assault crime, and that "...what this Court has before me indicates that he could quite possibly be a danger to the community." Id. at p. 132, lines 19-23. That assertion is meritless and there was nothing before the lower court to support its claim.

31. Mr. Cosby, who is 81 and legally blind, is clearly not a danger to the community. Mr. Cosby was out on bail prior to trial without incident. After the verdict, Mr. Cosby was confined to his home as a condition to continuing bail, again, without incident, and complied with all bail conditions.

32. Dr. Timothy Foley, PH.D., a licensed psychologist, evaluated Mr. Cosby in relation to his risk for recidivism. Citing Mr. Cosby's age and poor health, Dr. Foley testified in his expert opinion that Mr. Cosby's risk of recidivism is "extraordinarily low." See Notes of Testimony from SVP Hearing/Sentencing Hearing dated September 25, 2018 p. 25, at Ex. 1.

33. Moreover, prior to the instant conviction, Mr. Cosby had no prior criminal record.

34. The lower court's denial of bail on the purported basis that Mr. Cosby is a danger to the community was a clear abuse of discretion, particularly in light of the meritorious issues on appeal.

A SHORT STATEMENT OF RELIEF SOUGHT

35. As referenced above, Mr. Cosby was initially released on bail on December 30, 2015, the date of his arrest. Mr. Cosby did not violate any conditions of bail and appeared for all required Court proceedings.

36. Subsequent to the jury returning its verdict, as a condition of bail, Mr. Cosby was confined to in-house arrest. Again, Mr. Cosby appeared for all court proceedings.

37. Mr. Cosby seeks the reinstatement of bail as it existed prior to sentencing.

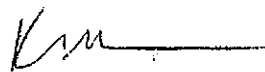
WHEREFORE, the Petitioner respectfully requests that this Honorable Court reverse the Order of the lower court denying Mr. Cosby bail; grant to Mr. Cosby bail in the amount previously set, which was \$1,000,000.00, ten percent acceptable; and enter such other relief as this Court deems just and reasonable. Alternatively, to the extent that this Honorable Court believes that it cannot grant this Petition on its face, or has questions concerning the same, it is requested that this Honorable Court grant a hearing on this Petition.

Respectfully submitted,

**PERRY SHORE WEISENBERGER &
ZEMLOCK**



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Date: October 23, 2018

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 127(a) of the Pennsylvania Rules of Appellate Procedure, I hereby certified 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.

Date: 10-23-18



Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire

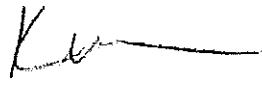
VERIFICATION

I do hereby swear and affirm that the facts and matters set forth in the within Petition for Review are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements made therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 10-23-18



Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire

EXHIBIT 2

MEGAN'S LAW

Magisterial District Judge 38-1-02 CR 3932-16

DOCKET TRANSCRIPT

Docket Number: MJ-38102-CR-0000131-2015

Criminal Docket



Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

CASE INFORMATION

Judge Assigned: Magisterial District Judge Elizabeth A. McHugh
Issue Date: 12/30/2015
OTN: T 741910-1
File Date: 12/30/2015
Arresting Agency: Cheltenham Township Police Dept
Arrest Date:
Complaint/Incident #: 20152583
Disposition: Held for Court
County: Montgomery
Disposition Date: 05/24/2016
Township: Cheltenham Township
Case Status: Closed

2016 MAY 26 PM 12:43
CLERK OF COURT
OFFICE
MONTGOMERY COUNTY
PENNA.

STATUS INFORMATION

Table with 3 columns: Case Status, Status Date, Processing Status. Rows include Closed status with dates 05/24/2016 and 12/30/2015, and processing statuses like Completed, Case Balance Due, and Awaiting Preliminary Hearing.

CALENDAR EVENTS

Table with 6 columns: Case Calendar, Event Type, Schedule, Start Date, Start Time, Room, Judge Name, Schedule Status. Lists events such as Preliminary Arraignment, Preliminary Hearing, and Formal Arraignment with their respective dates, times, and judges.

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on these docket sheets.

CR 3932-16-0000131-2015

Magisterial District Judge 38-1-02

DOCKET TRANSCRIPT

Docket Number: MJ-38102-CR-0000131-2015

Criminal Docket



Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

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DEFENDANT INFORMATION

Name: Cosby, William Henry Jr. **Sex:** Male
Date of Birth: 07/12/1937 **Race:** Black
Address(es):
Home
8210 New Second St.
Elkins Park, PA 19027

Advised of His Right to Apply for Assignment of Counsel? Yes
Public Defender Requested by the Defendant? No
Application Provided for Appointment of Public Defender? Yes
Has the Defendant Been Fingerprinted? No

CASE PARTICIPANTS

Participant Type	Participant Name	OTN/LOTN	Docket Number	Was Sworn In?	Has Testified?
Prosecution	Commonwealth of Pennsylvania			No	No
Defendant	Cosby, William Henry Jr.			No	No
Additional Officer	Reape, James J			No	No
Arresting Officer	Schaffer, Richard			No	No
Additional Officer	Shade, Michael R			No	No

BAIL

Bail Set:

Bail Action Type	Bail Action Date	Bail Type	Percentage	Amount
Set	12/30/2015	Monetary - Cash Percentag	10.00%	\$1,000,000.00

Bail Posted:

Surety Type	Surety Name	Posting Status	Posted Dt	Security Type	Security Amt
Self	Cosby, William Henry Jr. 8210 New Second St. Elkins Park, PA 19027	Posted	12/30/2015	Cash	\$100,000.00

Bail Depositor(s):

Depositor Name	Amount
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CR 0003932-2016 05/24/2016 12:58 PM

Magisterial District Judge 38-1-02

DOCKET TRANSCRIPT

Docket Number: MJ-38102-CR-0000131-2015

Criminal Docket



Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

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CHARGES

# Charge	Grade	Description	Offense Dt.	Disposition
1 18 § 3125 §§ A1	F2	Agg. Ind. Assault W/O Consent	01/15/2004	Held for Court
2 18 § 3125 §§ A4	F2	Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occurring	01/15/2004	Held for Court
3 18 § 3125 §§ A5	F2	Agg. Ind. Assault - Person Impairs Complainant	01/15/2004	Held for Court

DISPOSITION//SENTENCING DETAILS

Case Disposition	Disposition Date	Was Defendant Present?
Held for Court	05/24/2016	Yes
Offense Seq./Description	Offense Disposition	
1 Agg. Ind. Assault W/O Consent	Held for Court	
2 Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occurring	Held for Court	
3 Agg. Ind. Assault - Person Impairs Complainant	Held for Court	

ATTORNEY INFORMATION

District Attorney

Name: Kevin R. Steele, Esq.
Representing: Commonwealth of Pennsylvania
Counsel Status: Active
Supreme Court No.: 066335
Phone No.: 610-278-3098
Address: Montgomery CO Da's Office
PO Box 311
Norristown, PA 19404-0311

Private

Name: Brian J. McMonagle, Esq.
Representing: Cosby, William Henry Jr.
Counsel Status: Active
Supreme Court No.: 042394
Phone No.: 215-981-0999
Address: Mcmonagle Perri ET AL
1845 Walnut St Fl 19
Philadelphia, PA 19103

Magisterial District Judge 38-1-02

DOCKET TRANSCRIPT

Docket Number: MJ-38102-CR-0000131-2015

Criminal Docket



Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

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DOCKET ENTRY INFORMATION

Filed Date	Entry	Filer	Applies To
05/24/2016	Formal Arraignment Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
05/24/2016	Penalty Satisfied	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
05/24/2016	Penalty Assessed	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
05/24/2016	Case Balance Adjustment Recorded	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
05/24/2016	Held for Court	Magisterial District Judge Elizabeth A. McHugh	William Henry Cosby Jr., Defendant
04/26/2016	Preliminary Hearing Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
03/02/2016	Preliminary Hearing Cancelled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
02/04/2016	Preliminary Hearing Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
02/04/2016	Preliminary Hearing Continued	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
01/08/2016	Primary Participant Address Updated	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
01/08/2016	Preliminary Hearing Continued	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
01/08/2016	Preliminary Hearing Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
<i>THIS PRELIMINARY HEARING DATE HAS BEEN CONTINUED PENDING FURTHER ORDER OF THE COURT.</i>			
01/05/2016	Preliminary Hearing Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/31/2015	Primary Participant Address Updated	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/31/2015	Primary Participant Name Changed	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/30/2015	Bail Posted	Court of Common Pleas	William Henry Cosby Jr., Defendant
12/30/2015	Bail Set	Court of Common Pleas	William Henry Cosby Jr., Defendant
12/30/2015	Arrest Warrant Returned Served	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/30/2015	Preliminary Arraignment Scheduled	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/30/2015	Court of Common Pleas Review for Pre-Disposition Matter	Court of Common Pleas	William Henry Cosby Jr., Defendant
12/30/2015	Arrest Warrant Issued	Magisterial District Court 38-1-02	William Henry Cosby Jr., Defendant
12/30/2015	Attorney Active	Kevin R. Steele, Esq.	Commonwealth of Pennsylvania, Prosecution William Henry Cosby Jr., Defendant
12/30/2015	Attorney Active	Brian J. McMonagle, Esq.	William Henry Cosby Jr., Defendant
12/30/2015	Criminal Complaint Filed	Magisterial District Court 38-1-02	

CASE FINANCIAL INFORMATION

Case Balance:	\$ 0.00	Next Payment Amt:				
Last Payment Amt:		Next Payment Due Date:				
<u>Assessment Type</u>	<u>Assessment Amt</u>	<u>Adjustment Amt</u>	<u>Non-Monetary Payment Amt</u>	<u>Payment Amt</u>	<u>Balance</u>	
Miscellaneous Issuances	\$17.00	(\$17.00)	\$0.00	\$0.00	\$0.00	

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assumes any liability for inaccurate or delayed data, errors or omissions on these docket sheets. Docket sheet information should not be used in place of a criminal history background check, which can only be provided by the Pennsylvania State Police. Employers who do not comply with the provisions of the Criminal History Record Information Act (18 Pa.C.S. Section 9101 et seq.) may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

CR 000392-2016-0107-00000000

Magisterial District Judge 38-1-02

DOCKET TRANSCRIPT

Docket Number: MJ-38102-CR-0000131-2015

Criminal Docket



Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

Page 5 of 5

May 24, 2016

Date

Handwritten signature of Elizabeth A. McHugh in black ink.

Magisterial District Judge Elizabeth A. McHugh



Commonwealth of Pennsylvania
Court of Common Pleas
County of Montgomery
38th Judicial District



Notice of Formal Arraignment

Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

Court of Common Pleas - Montgomery County
Montgomery County Courthouse
Swede & Airy Streets
P.O. Box 311
Norristown, PA 19404

Richard Schaffer
Cheltenham Township Police Dept
8230 Old York Rd
Elkins Park, PA 19027

Docket No: MJ-38102-CR-0000131-2015
OTN: T 741910-1

Officer's Role: Arresting Officer

A Formal Arraignment has been scheduled for the above captioned case to be held on/at:

Date: Wednesday, July 20, 2016	Place: Video Room #1 Montgomery County Courthouse Swede & Airy Streets Norristown, PA 19404 610-278-3224
Time: 9:30 AM	

To the Defendant:

You should discuss this matter promptly with your attorney. If you fail to appear without cause at any proceeding for which your presence is required, including trial, your absence may be deemed a waiver of your right to be present, and the proceeding, including the trial, may be conducted in your absence. If you fail to comply with the conditions of the bail bond, if any, then the bond shall remain in full force, and the full sum of the monetary condition of release may be forfeited and your release may be revoked. In addition, a warrant for your arrest may be issued. Bring this notice with you.

Primary Participant Name and Address:

William Henry Cosby Jr.
8210 New Second St.
Elkins Park, PA 19027

5-24-16 _____
Date Defendant

May 24, 2016 _____
Date Magisterial District Judge Elizabeth A. McHugh



If you are disabled and require a reasonable accomodation to gain access to the Montgomery Court of Common Pleas and its services, please contact the Montgomery Court of Common Pleas at the above address or telephone number. We are unable to provide transportation. You can make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <http://ujportal.pacourts.us> to make a payment.

Si usted necesita un intérprete, llame al tribunal inmediatamente al teléfono listado arriba.

CR 0003932-2016 05/26/2016 Scan 9



Preliminary Hearing Notice

Mag. Dist. No:	MDJ-38-1-02
MDJ Name:	Honorable Elizabeth A. McHugh
Address:	7804 Montgomery Avenue Station Mews Elkins Park, PA 19027
Telephone:	215-635-1535

Commonwealth of Pennsylvania
v.
William Henry Cosby Jr.

File Copy

Docket No: MJ-38102-CR-0000131-2015
Case Filed: 12/30/2015
Comp/Cit #: 20152583
OTN: T 741910-1

Charge(s)	
18 § 3125 §§ A1 (Lead)	Agg. Ind. Assault W/O Consent
18 § 3125 §§ A4	Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occur
18 § 3125 §§ A5	Agg. Ind. Assault - Person Impairs Complainant

A Preliminary Hearing has been scheduled for the above captioned case to be held on/at:

Date: Tuesday, May 24, 2016	Place: Montgomery County Courthouse Courtroom: A 2 East Airy Street Norristown, PA 19404-0311 215-635-1535
Time: 9:30 AM	

Notice To Defendant

A complaint has been filed charging you with the offense(s) set forth above and on the attached copy of the complaint. If you fail to appear at the time and place above without cause, you will be deemed to have waived your right to be present at any further proceedings before the Magisterial District Judge and the case will proceed in your absence. If any of the charges against you are held for court, a request for a bench warrant against you will be transmitted to the Court of Common Pleas.

At the preliminary hearing you may:

1. Be represented by counsel;
2. Cross-examine witnesses and inspect physical evidence offered against you;
3. Call witnesses on your behalf other than witnesses to testify to your good reputation only, offer evidence on your behalf and testify;
4. Make written notes of the proceeding, or have your counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

If the case is held for court and if you fail to appear without cause at any proceeding for which your presence is required, including trial, your absence may be deemed a waiver of your right to be present, and the proceeding, including the trial, may be conducted in your absence.

If you cannot afford to hire an attorney, one may be appointed to represent you. Please contact the office of the Magisterial District Judge for additional information regarding the appointment of an attorney. If you have any questions, please call the above office immediately.

Should you fail to appear for your preliminary hearing, a warrant will be issued for your arrest.

April 26, 2016
Date

Elizabeth A. McHugh
Magisterial District Judge Elizabeth A. McHugh



If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation. You can make case payments online through Pennsylvania's Unified Judicial System web portal. Visit the portal at <http://ujportal.pacourts.us> to make a payment.

Commonwealth of Pennsylvania
Court of Common Pleas
County of Montgomery
38th Judicial District



RELEASE OF PRISONER

Commonwealth of Pennsylvania
v.
William Henry Cosby

Montgomery County Clerk of Courts
Montgomery County Courthouse
Clerk of Courts Office
PO Box 311
Norristown, PA 19404-0311
PH: 610-278-3346

Docket No: CP-46-MD-0003156-2015
OTN: T 741910-1
SID:
DOB: 07/12/1937

Charge(s)	
18 § 3125 §§ A1 (Lead)	Agg. Ind. Assault W/O Consent
18 § 3125 §§ A4	Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occurring
18 § 3125 §§ A5	Agg. Ind. Assault - Person Impairs Complainant

To the Warden/Director of _____:
(name of institution)

You are ordered/directed to release William Henry Cosby on Docket No. CP-46-MD-0003156-2015 for the charges listed, for the following reasons:

Hearing to be held at:

Date:	Location:
Time:	

- Acquitted/Found Not Guilty by (Jury/Court)
- Case Dismissed
- Charges withdrawn by Prosecution
- Bail Posted
- William Henry Cosby has been placed on (Probation/Parole)
- Other: _____

This release does not apply to any other commitment, hold order, or detainer against William Henry Cosby.

BY THE COURT:

December 30, 2015
Date

Pete Clark
(Signature of Issuing Authority)

File Copy Recipient List

Addressed To: William Henry Cosby Jr. (Defendant)
8210 New Second St.
Elkins Park, PA 19027

Brian J. McMonagle, Esq. (Private)
Mcmonagle Perri ET AL
1845 Walnut St Fl 19
Philadelphia, PA 19103

James J Reape (Additional Officer)
P O Box 311
Norristown, PA 19404-0311

Richard Schaffer (Arresting Officer)
Cheltenham Township Police Dept
8230 Old York Rd
Elkins Park, PA 19027

Michael R Shade (Additional Officer)
P O Box 311
Norristown, PA 19404-0311

Kevin R. Steele, Esq. (District Attorney)
Montgomery CO Da's Office
PO Box 311
Norristown, PA 19404-0311

v.
William Henry Cosby

	<u>All Charge(s)</u>
18 § 3125 §§ A1 (Lead)	Agg. Ind. Assault W/O Consent
18 § 3125 §§ A4	Agg. Ind. Assault - Complainant is Unconscious or Unaware that Penetration is Occurring
18 § 3125 §§ A5	Agg. Ind. Assault - Person Impairs Complainant

EXHIBIT 3

PSE/ISV PPI

SCAN 004/26/2018

Commonwealth of Pennsylvania

Charge(s) and Bill(s) of Information

VS

CR-3932-16

William Henry Cosby, JR.

CT.1 Agg. Indecent Assault

CT.2 Agg. Indecent Assault

CT.3 Agg. Indecent Assault

	JURY TRIAL	OPEN GUILTY PLEA	SENTENCE
DATE	4/9/18-4/20/18		
JUDGE	Steven T. O'Neill		Steven T. O'Neill
COURTROOM	A		A
COMMONWEALTH'S ATTY	Kevin Steck		Kevin Steck
DEFENDANT'S ATTY	Thomas Mescreau		Joseph P. Green
COURT REPORTER	Ginny Womelsdorf		Ginny Womelsdorf
COURT CLERK	Barb Lewis		Barb Lewis

AND NOW, this 26th day of APRIL 20 18

The Court finds that the defendant has knowingly, intelligently and voluntarily entered a plea of guilty with reference to the following Bills of Information and the Court accepts the guilty plea:

The Court accepts the terms of the plea agreement and sentence will be imposed in accordance with it.

The motion of the District Attorney to nol pros the following Bill(s) of Information is granted: Costs on: Defendant County

The Court sustains a motion for judgment of acquittal as to Bill(s) of Information:

The Court overrules a motion for judgment of acquittal as to Bill(s) of Information:

CT.1, CT.2 & CT.3

After trial, the Jury/Court finds the defendant:

Guilty of the following Bill(s) of Information CT.1 (F2) CT.2 (F2) CT.3 (F2)

Not guilty of the following Bill(s) of Information

Jury sworn: 4/9/18 @ 2:26pm Jury Returns: 4/26/18 @ 1:47pm Trial Days: 13

The Court directs that the defendant forthwith register with the Adult Probation Department for: PPI Evaluation House Arrest Suitability Assessment SIP/RIP Assessment

Pre-Sentence Investigation and Report Commencing Supervision Sexually Violent Predator Assessment

Sentence deferred: Defendant remanded without bail (released on same bail) remanded pending posting of bail in the increased amount of \$_____ pending sentencing.

90 Day Rule is waived on the record

Special Conditions: A not to leave his 8210 N. 2nd St., Cheltenham, PA address & A's passport is in the possession of Montco Detectives

*PPI-psycho sexual; bail conditions to be supervised by APO

Defendant's PA driver's license attached affidavit submitted to be surrendered by

Blood Alcohol Content _____ Offense Refusal

BY THE COURT: *Steven T. O'Neill*

AND NOW, September 25, 2016

Count ①
Agg Int
Assault
3125(4) (1)

- Defendant is sentenced to undergo **Imprisonment** for not less than 3 years nor more than 10 years in such State Correctional Institution as shall be designated by the Deputy Commissioner for Programs, Department of Corrections, and sent to the State Correctional Institution at Greentford/Muncy for this purpose. Commitment to date from 9/25/16
 - R.R.R.I. Minimum _____ months Not R.R.R.I. Eligible
 - DA Waives R.R.R.I. Objection DA waives objection to any duplicate time credit issues
 - Consecutive/concurrent** to all previously imposed sentences Costs on the County
 - Eligible for boot camp Credit for time served from _____
- Defendant is sentenced to undergo **Imprisonment** for not less than _____ months nor more than _____ months in the Montgomery County Correctional Facility. Commitment to date from _____ Credit for time served from _____
 - Consecutive/concurrent** to all previously imposed sentences Costs on the County
 - Eligible for Work Release Is not eligible for good-time credit
- Defendant is sentenced to **Intermediate Punishment** for a period of _____ months; the first _____ months of which is to be served in the following Restrictive Intermediate Punishment Program from: _____ House Arrest
- Defendant is sentenced to **Restrictive Intermediate Punishment (RIP)** Program for a period of _____ months. All treatment and supervision pursuant to 42 P.S. 89763, 89804, et seq.
- Defendant is sentenced to **State Intermediate Punishment (SIP)** Program for a period of twenty-four (24) months pursuant to 61 P.S. 84104, et seq.
- Defendant is sentenced to **Restorative Sanctions - Probation and/or** _____ for a period of _____ months/years in the custody of:
 - Montgomery County Adult Probation/Parole Department PA Board of Probation and Parole
 - Consecutive/concurrent** to _____ To date from: _____

CT. 1

- Defendant is sentenced to pay the costs of prosecution, and a fine of \$ 25,000.00 and restitution of \$ _____ to _____ within the first 12 months of supervision/release from custody in monthly installments as directed, and as authorized by law.

CT. 1

- Determination of guilt without further penalty (2) (3) Bills merge for sentencing purposes

CONCURRENT/CONSECUTIVE SENTENCE	CONCURRENT/CONSECUTIVE SENTENCE
Information No. _____ sentence is _____	Information No. _____ sentence is _____
<input type="checkbox"/> R.R.R.I. Min. _____ <input type="checkbox"/> Not R.R.R.I. Eligible and is to run concurrently/consecutively with/to sentence imposed on Info. # _____	<input type="checkbox"/> R.R.R.I. Min. _____ <input type="checkbox"/> Not R.R.R.I. Eligible and is to run concurrently/consecutively with/to sentence imposed on Info. # _____

SPECIAL CONDITION(S) OF SENTENCE(S)

- Outpatient Treatment Inpatient Treatment PPI Evaluation and recommended treatment
- CRN Evaluation and Treatment Alcohol Highway Safety School or Safe Driving School
- Community Service: _____ hours at site to be determined, within _____ months/years. Comply with Megan's Law 42 PA C.S. 9799.5d registration requirements
- Defendant shall comply with any special conditions of probation/parole/state intermediate punishment imposed by the Montgomery County Adult Probation/Parole Dept, or the PA Board of Probation and Parole.
- Defendant shall pay the monthly offender supervision fee. Offender supervision fee is waived
- Eligible to Participate in a Reentry Plan Do not send to collection agency
- To be evaluated for Sex Offender, Addiction, Mental Health, Supervision
- Anger Management D/V Counseling Parenting Classes No contact with ANDREA CONSTANT OF FAMILY MEMBERS
- Parole authority retained pursuant to 75 P.S. 3804D and 3815
- Other: See State Provision

Comply w/ 42 P.S. 9799.51 et seq

BY THE COURT: 

EXHIBIT 4

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

NO. CR-3932-16

vs.

WILLIAM H. COSBY, JR.

2017 JUN 19 PM 3:33
MONTGOMERY COUNTY
PENNSYLVANIA

ORDER

AND NOW, this 17th day of June, 2017, after being informed that the Jury was hopelessly deadlocked, after fifty-two (52) hour of deliberations and upon consideration of the Defense's Oral Motion for Mistrial, (#7) made at 10:30 a. m., this date, the Defense's motion is hereby **GRANTED** by reasons of manifest necessity.

BY THE COURT:



STEVEN T. O'NEILL,

J.

Copy of the above Order to the following:

Interoffice Mail

Orally in open Court on the record

Hand delivered in open Court to the following:

Mailed via USPS to the following:

Commonwealth's Attorney: Kevin Steele, M. Stewart Ryan
& Kristen Feden

Defense Attorney: Brian McGonagle & Angela Agrusa

Court Administration – Criminal Division: Andrea Grace

Clerk/Secretary: Barbara Lewis

Court Reporter: Ginny Womelsdorf

Date: 6/17/17

EXHIBIT 5

IN THE COURT OF COMMON PLEAS
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

- - -

COMMONWEALTH OF PENNSYLVANIA:

vs.

NO. 3932-16

WILLIAM H. COSBY, JR.

:
:
:
:

- - -

SVP HEARING/SENTENCING HEARING

- - -

Courtroom A
Tuesday, September 25, 2018
Commencing at 9:27 a.m.

- - -

Virginia M. Womelsdorf, RPR
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

- - -

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

- - -

COUNSEL APPEARED AS FOLLOWS:

KEVIN R. STEELE, ESQUIRE
District Attorney
M. STEWART RYAN, ESQUIRE
KRISTEN GIBBONS-FEDEN, ESQUIRE
TRACY S. PIATKOWSKI, ESQUIRE
Assistant District Attorneys
for the Commonwealth

JOSEPH P. GREEN, JR., ESQUIRE
ELIZABETH A. REDMOND, ESQUIRE
PETER GOLDBERGER, ESQUIRE
for the Defendant

- - -

I N D E X

COMMONWEALTH'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
KRISTEN F. DUDLEY, Psy.D.				11	5 12

DEFENDANT'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
TIMOTHY P. FOLEY, Ph.D.	6	21	26	53	54

- - -

E X H I B I T S

DEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-SVP-1	Report of Timothy P. Foley, Ph.D. dated 9-11-18	--	24
D-SVP-2	Special Section - DSM-5 and paraphilic Disorders	7	22
D-SVP-3	Curriculum Vitae of Timothy P. Foley, Ph.D.	18	19

- - -

	<u>Page</u>
Sentence of the Court	119

1
2 definition of mental abnormality?

3 THE WITNESS: I could have also used the
4 ICD-10, the International Classification diagnosis.

5 THE COURT: Did you?

6 THE WITNESS: I did not.

7 THE COURT: Okay. So you used DSM-5?

8 THE WITNESS: I used DSM.

9 THE COURT: All right. Now, that may
10 open up for questions.

11 MR. RYAN: No.

12 MR. GREEN: No, thank you.

13 THE COURT: Thank you very much, ma'am.
14 You may step down.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 - - -

18 MR. GREEN: I'd call Dr. Timothy Foley.

19 - - -

20 TIMOTHY P. FOLEY, PH.D., having been
21 duly sworn, was examined and testified
22 as follows:

23 EXAMINATION ON VOIR DIRE

24 BY MR. GREEN:

25 Q Please state your name and spell your last name.

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24
25

A Timothy P. Foley, F-O-L-E-Y.

Q What is your vocation?

A I'm a licensed psychologist.

Q What is your highest educational attainment?

A I have a Ph.D. in psychology.

Q How long have you been a Ph.D. in psychology?

A For approximately 30 years.

Q Do you have any state or governmental licensure in connection with your vocation?

A Yes. I'm licensed in Pennsylvania and New Jersey.

Q Do you have any experience in the practice of psychology and forensic psychology in the courts?

A Yes, I do.

Q How long have you been practicing forensic psychology in the courts in Pennsylvania and New Jersey?

A In Pennsylvania, since 1990 approximately. And in Jersey, since 2000, 2001.

Q Do you hold any positions with the federal courts in New Jersey and Pennsylvania regarding the assessments and treatment of sex offenders?

A Yes. I have a purchasing agreement with Federal Parole and Probation that I've had for many years.

Q What do you do in brief for the federal courts and

1
2 probation departments in New Jersey and Pennsylvania?

3 A I primarily do risk assessments, psychological
4 evaluations primarily for child pornography offenses.

5 Q Do you have any history of practice in the
6 assessment and treatment of sex offenders?

7 A Yes.

8 Q And where did that begin? What has that entailed?

9 A Over approximately the last 25 years I've done
10 evaluations in federal and state courts in New Jersey,
11 Pennsylvania, Virginia, Delaware.

12 Q Do you have any experience with the legislation
13 and litigation of sexually violent predator cases?

14 A Yes. I've done many cases in Pennsylvania and New
15 Jersey.

16 Q Have you had occasion to participate in the
17 legislative side on the development of SVP legislation
18 by presentations to --

19 A Yes. I've testified in Harrisburg to the
20 legislature in the late '90s; '97, '98.

21 Q Have you participated in international forums
22 regarding these issues?

23 A Yes.

24 Q For instance, when most recently?

25 A I believe the last time was in Stockholm probably

1
2 about 13, 14 years ago.

3 (Curriculum Vitae of Timothy P. Foley,
4 Ph.D. marked Defendant's Exhibit D-SVP-3
5 for identification.)

6 MR. GREEN: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes.

9 BY MR. GREEN:

10 Q Sir, I'm going to show you what's been marked
11 D-SVP-3. Is that a copy of your most recent Curriculum
12 Vitae?

13 A I believe so, yes.

14 MR. GREEN: Move the admission of D-3.

15 THE COURT: Any objection?

16 MR. RYAN: No.

17 THE COURT: It is admitted.

18 (Defendant's Exhibit D-SVP-3 received in
19 evidence.)

20 MR. GREEN: Your Honor, the defendant
21 offers Dr. Timothy Foley as an expert in forensic
22 psychology and specifically in the assessment of
23 persons charged with sex offenses.

24 MR. RYAN: I would object to that based
25 on the report. It's my understanding it is a risk

1
2 assessment. So certainly if he's going to testify as
3 to risk assessments, even specifically with regard to
4 sex offenders --

5 THE COURT: What type of risk assessment
6 did he do?

7 MR. GREEN: What type of risk assessment
8 did he do in this case?

9 THE COURT: Yes.

10 MR. GREEN: I think the best answer to
11 that is I'll ask him, if you'd like.

12 THE COURT: Well, they're raising an
13 objection to his qualifications as an expert. And what
14 you're saying -- and I was just asking -- you said it's
15 based on his report. Now you're calling him as a
16 defense witness regarding an SVP, you know, opinion
17 held by a member of the board; correct?

18 MR. GREEN: I am not. I'm limiting what
19 I'm calling him for. I'm going to ask him -- the only
20 SVP questions I'll ask him have to do with the
21 authenticity of the exhibit I just used, and it's
22 limited to the definitions. I'm not asking him to
23 express SVP opinions.

24 THE COURT: All right.

25 MR. GREEN: Separately he'll address the

1
2 sentencing issues. And what I'll do is when I'm
3 finished the questions on the first issue, I'll tell
4 you when I'm moving on to the second issue.

5 THE COURT: Do you have any objection to
6 him being called as a forensic psychologist and break
7 it down?

8 MR. RYAN: So that he can say what the
9 definition on Page 193 is?

10 THE COURT: I don't care what he's going
11 to say. Based on his qualifications, do you have any
12 objection to calling him as a forensic psychologist
13 based on his experience and his testimony in previous
14 cases?

15 MR. RYAN: No.

16 THE COURT: All right. So, so far we
17 have one down. What is the further -- the finding of
18 that that you want to utilize it for? So he's a -- I'm
19 going to admit him as an expert in forensic psychology
20 which is broad. Anything else?

21 MR. GREEN: I think that covers it.

22 THE COURT: All right.

23 DIRECT EXAMINATION

24 BY MR. GREEN:

25 Q Doctor, have you had occasion to review what's

1
2 been marked as D-SVP-2, an article reprint written by
3 Michael B. First, M.D., titled *DSM-5 and Paraphilic*
4 *Disorders* published in the Journal of the American
5 Academy of Psychiatry and Law, Volume 42, Pages 192 to
6 201, in 2014?

7 A Yes.

8 Q Based on your experience, your review of that
9 article and other information in the field, do you have
10 an opinion as to whether that's an authoritative work?

11 A Yes.

12 Q And what is your opinion in that regard?

13 A It is. It's been incorporated into the DSM-5.

14 MR. GREEN: Move the admission of
15 D-SVP-2.

16 THE COURT: Admitted.

17 (Defendant's Exhibit D-SVP-2 received in
18 evidence.)

19 BY MR. GREEN:

20 Q Doctor, at my request did you conduct an
21 assessment designed to study and express opinions on
22 the likelihood of recidivism expressed or presented by
23 Mr. Cosby?

24 A Yes.

25 Q How did you go about conducting that assessment?

1
2 A I reviewed the records listed on Page 1 and 2 of
3 my report, and I met with Mr. Cosby on July 18th for
4 approximately three hours.

5 MR. GREEN: Your Honor, I believe that
6 the report's been marked as D-SVP-1, and I'd move its
7 admission.

8 MR. RYAN: I don't have an objection
9 with it. I just want to make sure I understand in
10 terms of expert testimony, because there are questions
11 about opinions, if he's being offered for something in
12 addition to just general forensic psychology and the
13 definition of --

14 THE COURT: Forensic psychology is a
15 broad, broad category. I'll hear his testimony. He
16 examined the defendant about to be sentenced in a
17 criminal case. That's a very broad category, so I'll
18 hear him in regards to his evaluation.

19 MR. GREEN: I think I moved the
20 admission of D-SVP-1.

21 THE COURT: You did.

22 MR. GREEN: Is it admitted?

23 THE COURT: Yes.

24 MR. GREEN: I have a bench copy if you'd
25 like one.

(Defendant's Exhibit D-SVP-1 received in evidence.)

BY MR. GREEN:

Q Dr. Foley, are you familiar with the literature in the field on the likelihood of re-offending or recidivism?

A Yes.

Q And did you express your views in that regard on Page 4 of your report?

A I did.

Q Did notice any disabilities that Mr. Cosby presents?

A The records I have indicate blindness, and he demonstrated blindness during my meeting with him.

Q Did you notice anything about his age and his physical condition other than his blindness?

A He ambulates with a cane, needed assistance.

Q Did he seem to you in the interactions you had with him to be self-sufficient?

A No.

Q Did you draw any conclusions regarding the risk for sexual offense recidivism in the future? Yes or no?

A Yes.

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2 MR. GREEN: Your Honor, this portion is
3 offered for sentencing. May I proceed?

4 THE COURT: Yes.

5 BY MR. GREEN:

6 Q What opinions did you reach regarding his risk for
7 recidivism in the future?

8 A Extraordinarily low.

9 Q Can you explain to the judge why?

10 A Because he's 81 years old. He's been convicted of
11 a sex offense. Sex offense recidivism declines as a
12 function of aging. After 70, it becomes virtually
13 negligible. He has no known sexual misconduct for the
14 last 15 years. For all of those reasons, I found him
15 to be at extraordinarily low risk for sex offense
16 recidivism.

17 Q Did you identify in your report any particular
18 pieces of literature that you think are particularly
19 relevant in that regard?

20 A Yes, I quoted Barbaree and Blanchard.

21 Q What is Barbaree and Blanchard?

22 A Barbaree and Blanchard is a study that was done on
23 an analysis looking at aging and recidivism, and they
24 found extremely low rates. And I'm basically
25 paraphrasing Barbaree and Blanchard saying that over

1
2 70, sex offense recidivism becomes negligible.

3 Q Is Barbaree and Blanchard the work that's
4 identified in Footnote 1 of your report at Page 4?

5 A Yes.

6 Q And is that published in 2009 in a text?

7 A Yes.

8 Q Is that text generally accepted in the field?

9 A Yes.

10 Q And is the Barbaree and Blanchard article
11 generally accepted as authoritative, in fact the gold
12 standard on age-related recidivism?

13 A Yes.

14 MR. GREEN: That's all I have, Your
15 Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. RYAN:

19 Q Good morning, Doctor.

20 A Good morning, sir.

21 Q So I have a few questions just so that I make sure
22 I understand what it is that you did with regard to
23 this report and your testimony is going to be.

24 Before we get there, have you ever
25 testified as an expert for the government in any

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capacity?

A Not in Pennsylvania. Not that I can recall, no.

Q Okay. And when I say "government", I mean someone prosecuting a criminal offense.

A Correct.

Q Have you ever done an SVP assessment before?

A Yes.

Q Have you ever found that a person that you're evaluating meets the statutory definition of an SVP?

A Yes.

Q And how many times have you done that?

A Approximately -- in Pennsylvania, approximately -- and New Jersey, approximately 50 percent of the referrals that I get.

Q So 50 percent of the time you find someone to be an SVP?

A So when a defense attorney retains me, I deliver a contrary opinion. And I don't testify.

Q In terms of the records that you reviewed in order to compile your report, you'd agree with me that you list five different records that you reviewed?

A Yes.

Q And one of them was Dr. Dudley's SVP assessment?

A Correct.

1 re-traumatization of a victim in depositions. As she
2 said, Mr. Cosby, you took her beautiful, healthy, young
3 spirit and crushed it. I don't know whether the
4 defendant read your statement. I did. I heard the
5 very clear impact on your life.
6

7 I also heard from your family of the
8 victim traumatization because traumatization of this
9 sort is a family experience. And it is especially
10 devastating when such an extraordinary family like the
11 Constands were put through this devastating trauma. So
12 I put a high degree of weight on the impact of the
13 crime and the victim and her family.

14 So I have said the reasons why the Court
15 and the importance it is putting on the different
16 sentencing factors.

17 Thirty-four months. Thirty-four long
18 months since this Criminal Complaint was brought. It
19 is time for justice in a court of law. Mr. Cosby, this
20 is all circled back to you. The day has come, the time
21 has come.

22 SENTENCE OF THE COURT

23 THE COURT: Accordingly, you have been
24 given your post-sentence rights. There's nothing
25 further to come before this Court. It is the sentence

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2 of this Court based upon the reasons set forth that you
3 be sentenced to not less than three years nor more than
4 10 years in such State Correctional Institution as
5 shall be designated by the Deputy Commissioner for
6 Programs, Department of Corrections, and sent to the
7 State Correctional Institution at Phoenix forthwith for
8 this purpose. You are not RRRI eligible. You shall
9 pay the costs of prosecution and a fine of \$25,000
10 within the first 12 months.

11 Count 2 and Count 3 of the Bills merge
12 for the purpose of sentencing. You are to have no
13 contact with Andrea Constand or any family members.
14 And you shall be subject, if so appropriate, by the
15 Department of Corrections for sex offender programming.

16 All right. The sentence of the Court
17 has been imposed.

18 MR. GREEN: We'd move for bail pending
19 appeal.

20 THE COURT: All right. You have no
21 right to it. At this stage I'm not sure you have
22 reasons. Why would I give you bail pending appeal?

23 MR. GREEN: I do, Your Honor. There
24 are, as you know, substantial legal issues to be
25 asserted on. And there's one of which you are not

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2 aware that I would like to bring to your attention.

3 I have a -- and this has been provided
4 to Mr. Steele last week. There was a news report that
5 the tape recording of Mr. Cosby made by Mrs. Constand
6 was inauthentic. And as a result of that news report,
7 we've had the tape recording assessed by an expert. A
8 preliminary expert review is available. I've provided
9 a copy to counsel. I've marked the copy as D-Bail-1
10 and move its admission and ask you to consider it.

11 MR. STEELE: But I ask that the Court
12 not consider it.

13 THE COURT: I'm not considering it.
14 This Court is going to lose all jurisdiction. I have
15 sentenced this defendant. So I'm not sure what you're
16 bringing up with this Court.

17 MR. STEELE: He's bringing up --

18 THE COURT: And why at this stage you're
19 bringing it when this defendant has been sentenced to
20 three to 10 years.

21 MR. GREEN: Because it's going to be the
22 subject of a Motion for a New Trial as well as, if that
23 motion is denied, part of his appeal.

24 MR. STEELE: It's PCRA.

25 THE COURT: Well, you'll file a motion,

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2 won't you? You're going to file a motion, I am
3 assuming. And if you file a motion, then this Court
4 will consider bail pending appeal. Or a Superior Court
5 will.

6 Right now at this stage that I've
7 imposed sentence -- I don't understand just saying that
8 you're going to -- you read something in a newspaper
9 and that you're going to file some sort of a motion by
10 it. You'll file the motion, and then it will be
11 appropriate. So I can't take on newspaper accounts as
12 to what I do for bail.

13 MR. GREEN: I didn't ask you to take a
14 newspaper account, sir.

15 THE COURT: You said you read in the
16 newspaper.

17 MR. GREEN: No, I said I read it in the
18 newspaper and so we hired experts, and we had an expert
19 evaluate the original tape which we got from Mr.
20 Steele.

21 THE COURT: And you'll make that part of
22 the motion.

23 MR. STEELE: And the expert's about as
24 good as all the other experts they have gotten in the
25 case, so I don't know where we're going with this.

1
2 THE COURT: Let it be part of your
3 motion. I don't know why I didn't hear a Motion for
4 Extraordinary Relief. Nobody prevented you from doing
5 that today. I don't know why you waited until the end
6 to do it. I've sentenced this defendant.

7 MR. GREEN: Because it requires a
8 record --

9 THE COURT: It requires a record?

10 MR. GREEN: -- which would require a
11 postponement of sentence. And I pay attention to the
12 rules. That's why I didn't make it an oral motion.

13 THE COURT: I don't know if it required
14 a record or not or what the position is, but at this
15 stage, look, I've imposed sentence. So simply the fact
16 that you're going to file a post-sentence motion is not
17 one of the discretionary aspects for bail.

18 I mean, look, this case has been 34
19 months. This defendant, you know, again, I'm not
20 permitted to treat him any differently than anybody
21 else. He's been convicted of a very serious crime and
22 I've just sentenced him to three to 10 years in a state
23 correctional facility.

24 Now, so far that is not -- if that's
25 your reason, you know -- again, equal justice under the

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2 law is a reason. I just have to -- at this stage do
3 you have any other reasons?

4 MR. GREEN: Only his constitutional
5 right to appeal and the issues of substantial legal
6 question that you've already reviewed over that, as you
7 said, 34 months.

8 THE COURT: Well, do you have cases that
9 say simply that somebody has a constitutional right to
10 appeal when it comes to discretionary bail?

11 MR. GREEN: I don't have to have a case
12 that says that there's an express right to a -- there's
13 an express constitutional right to appeal.

14 THE COURT: Yes, there is. I agree a
15 hundred percent. Does that come with a concurrent
16 right to bail?

17 MR. GREEN: No.

18 THE COURT: Okay. Well, then, again,
19 the fact that you have it, I know that you're going to
20 appeal. You've told us. And well you should. But
21 I've just not seen its connection to the discretion of
22 this Court on his right to bail. He has been sentenced
23 to a maximum sentence of 10 and a minimum sentence of
24 three years. I'm just not seeing it. I don't know --
25 do you have anything else?

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MR. GREEN: No. Thank you.

THE COURT: All right. I have imposed sentence. At this stage if you want to take it up with another court, you can. That is just insufficient.

The Court's, again, reason for not granting bail pending an appeal which I'm expecting is, one, I haven't seen it, and two, that -- you know, again in applying the guidelines in this case, this case was called for a sentence of three years. Again, that's a serious offense.

I have put the reasons for the sentence on the record. Those reasons also support this Court's discretionary aspects regarding bail, you know, that whether because of his public persona, whether that shines light on him such that he is not a risk to re-offend, certainly the findings that I've made indicating that he was a risk.

And at this stage I'm just not going to treat him differently than anybody else that comes through this courtroom. I don't know why I would. There are people that are in jails now who believe that they also have rights to appeal, but this is a statutory pronouncement that, again, the discretionary right just hasn't been proven to this Court.

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2 If you wish to try to bring it back
3 before this Court as an application before you file a
4 motion, you can do so.

5 MR. GREEN: Would the Court rely on the
6 statements made here on the record as its reasons for
7 denying bail?

8 THE COURT: Would I rely on it?

9 MR. GREEN: Yes. I have to ask for a
10 statement of reasons, and I'll ask the court reporter
11 to prepare it. I'm trying to give you the courtesy of
12 asking you if you'd like to say anything else.

13 THE COURT: Here's what I will do. I am
14 going to retire and I'm going to look up and I will
15 come up with exactly what my reasons for denying bail
16 at this stage are. And I'll hear both sides on it
17 because this is an application to the Court. This is
18 an application to the Court under the rules, and you
19 may apply to the discretionary aspects of the Court.

20 So, again, if you're going to rely upon
21 what you said, I will take that as your application.
22 I'll give Mr. Steele an opportunity then to respond,
23 unless you have something else.

24 MR. GREEN: No. I'm just trying to be
25 courteous.

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THE COURT: Huh?

MR. GREEN: I'm just trying to be courteous and professional about this.

THE COURT: You have been nothing but courteous and professional.

MR. GREEN: I wasn't able to tell that that was your view.

THE COURT: I am simply at this stage -- you know, you brought a motion and I have to decide it. And it's a Motion for Bail Pending Appeal; correct? And your reasons are, so that Mr. Steele can respond, that you have filed an expert report with the District Attorney saying that there's something wrong with the tape and that you do intend to make it part of a post-sentence motion. That's your reason.

MR. GREEN: No, sir.

THE COURT: And you intend to file an appeal.

MR. GREEN: That's one of the reasons about which you hadn't heard before today. The other reasons you all heard about before today. They are the issues being tendered on appeal. Like, for instance, the 404(b) rule. Regardless of its rightness or un-rightness, it's certainly worthy of review.

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THE COURT: Help me understand that.

MR. GREEN: All of those reasons are going to be raised on appeal.

THE COURT: Agreed. So I understand it, but is there any one particular in that -- this comes up in every case where somebody is sentenced to more than two years, to a maximum, you know, two years. The fact that you say we're going to appeal, I understand that. And I welcome it. And you should. You should.

But I'm just not sure where -- if that is a fact, I just need a case that says the fact that you're going to file an appeal somehow obviates this Court's or somehow mitigates or somehow vacates this Court's discretion regarding bail pending appeal.

MR. GREEN: The fact that there are meritorious issues should affect your exercise of discretion. That's all I was saying.

MR. STEELE: I would submit that that is not a factor and there is not support for that in the law.

Number two, in terms of this new Hail Mary, to talk about a tape that is -- and I don't know the exact term that he used there -- on a collateral matter in this is not new to this case. And, you know,

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2 it was something that, if you look at the deposition,
3 was recognized by Mr. O'Connor during the deposition as
4 not being a full transcript of the recording because it
5 was turned on after the recording started.

6 And for this to now have gone through
7 that proceeding, the first trial and the second trial,
8 and then all of a sudden this is some issue, well, then
9 that's going to be an ineffective claim on those
10 attorneys. And if they're willing to waive all their
11 appeals and go to a PCRA, well, that's the time period
12 that this would come up.

13 So for this to be inserted right now, I
14 suggest, is more of just the nonsense and show that
15 we've had to deal with for too long. And I'd submit to
16 the Court that this and this issue on bail, they're
17 asking you to treat him differently than others in this
18 circumstance. And that's not appropriate. And I think
19 the Court recognizes this.

20 And I ask: What state prisoner or
21 proven sexually violent predator gets bail? The
22 defendant has gone through a process of due process.
23 And if you look at the process here, he was allowed out
24 on bail, \$100,000. Okay. It's 10 percent of a
25 million. Then after his conviction, he was put on

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2 house arrest.

3 And now we've gone through a sentencing.
4 He's been sentenced to state prison. He has been
5 proven to be a sexually violent predator. And if you
6 look as this process goes through, your individual
7 rights to remain free on bail diminish as the right to
8 incarceration comes up. And as the Court noted when
9 you were going through this, primary purpose of Level 5
10 offenders, a primary purpose is an incapacitation to
11 protect the public.

12 And I would suggest to the Court that no
13 amount of bail -- I mean, this is -- he should just be
14 remanded. No amount of bail to a man that's
15 purportedly worth \$400 million supports that he will be
16 here to serve a sentence and/or to do this.

17 So no amount of bail can assure a
18 sentence or protect the public. Again, I'd submit that
19 this is asking for special treatment for him in a
20 circumstance that I believe they're asking for him to
21 be able to stay home and enjoy the comforts of his home
22 and enjoy that wealth.

23 And that's just not the place where, you
24 know, somebody who's been convicted of a state sentence
25 and -- or sentenced to a state sentence as well as

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2 found to be a sexually violent predator works in
3 materials of protection of the public.

4 I have a Memorandum of Law that we
5 prepared in anticipation of this that I'll give to the
6 Court.

7 THE COURT: You have a memorandum?

8 MR. STEELE: I do.

9 THE COURT: Well, I have to review it.
10 The Court will recess for ten minutes to review the
11 arguments of counsel, the Rules of Criminal Procedure
12 and the memorandum of the Commonwealth.

13 - - -

14 (Recess.)

15 - - -

16 (Proceedings were reconvened with the
17 Court, Mr. Steele, Mr. Ryan, Ms. Feden,
18 Ms. Piatkowski, Mr. Green, Ms. Redmond,
19 Mr. Goldberger, and the defendant being
20 present:)

21 - - -

22 THE COURT: All right. The Court has to
23 make the decision based upon, again, the Court revoked
24 the defendant's bail. And cognizant to Rule 521(b)(3),
25 when the defendant is released on bail -- when a

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2 sentence imposed includes imprisonment of more than two
3 years, the defendant shall not have the same right to
4 bail as before verdict. Bail may only be allowed in
5 the discretion of the judge. So there is no automatic
6 requirement under the law.

7 Now, in this case I've heard the
8 arguments of counsel forwarded by the defense. The
9 argument was he has legitimate issues on appeal and he
10 has a matter that he is going to incorporate in a
11 post-sentence motion that he will bring before this
12 Court.

13 I am incorporating all of the record of
14 the sentencing. In that record of the sentencing,
15 again, my reasons for the sentence is the reasons that
16 I am relying on in denying this defendant bail. This
17 is a serious crime for which he was convicted. This is
18 a sexual assault crime.

19 I know the testimony dealt with whether
20 he would be likely to recidivate or could be a danger
21 to the community. The nature of the crime and what
22 this Court has before me indicates that he could quite
23 possibly be a danger to the community.

24 I recognize that we're relying upon his
25 age and I incorporated that into my sentence as well as

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2 his blindness, but, again, I harken back to all the
3 reasons that I made for his sentence and incorporate
4 them as to the reasons as to why he would be denied
5 bail pending appeal.

6 I will revisit that if you file a
7 post-sentence motion with this Court because you may
8 have different reasons. And you would then be able to
9 incorporate what you just brought to this Court's
10 attention as a basis for this sentence.

11 So the Court has heard your arguments of
12 counsel and, again, the defendant is remanded to comply
13 with the order of this Court.

14 MR. GREEN: Your Honor, one other
15 matter, minor matter, on the record. I've been asked
16 to hand in my copy of the PSI.

17 THE COURT: I'm going to order that both
18 parties keep their PSI. There's going to be an appeal.
19 You're not to release it to the public, but both
20 parties can keep it. I do routinely when there's an
21 appeal.

22 MR. GREEN: Thank you.

23 MR. STEELE: Thank you.

24 (At 2:42 p.m., proceedings were
25 concluded.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

VIRGINIA M. WOMELSDORF, RPR
Official Court Reporter

- - -

EXHIBIT 6

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA : No. 3932-16
: :
v. : :
: :
WILLIAM H. COSBY, JR. : :

ORDER

AND NOW, this 27th day of September, 2018, the Defendant's request for bail pending appeal pursuant to Pa. R. Crim. P. 521 (B)(2), is hereby **DENIED**, for the reasons set forth on the record on September 25, 2018.

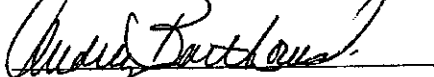
BY THE COURT:



STEVEN T. O'NEILL, J.

Copies of this Order mailed on 9/27/18 to the following:

Joseph P. Green, Esq.
Kevin R. Steele, Esq.
M. Stewart Ryan, Esq.
Kristen Gibbons Feden, Esq.
Michael R. Kehs, Esq. (Court Administrator)



Secretary

2018 SEP 27 PM 2:20
CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

EXHIBIT 7

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

No. 3932-16

v.

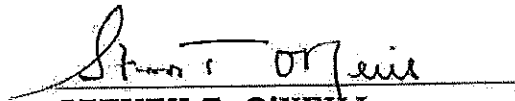
WILLIAM H. COSBY, JR.

ORDER

AND NOW, this 23rd day of October, 2018, upon consideration of the Defendant, William H. Cosby, Jr.'s "Post-Sentence Motion to Reconsider and Modify Sentence and For a New Trial In the Interest of Justice," the Commonwealth's response thereto, and following an exhaustive review of the record, the Court has determined that no hearing or argument is required on the issues raised. Pa. R. Crim. P. 720 (B)(2)(b). It is hereby **ORDERED** and **DECREED** that the said Motion is **DENIED**, whereupon, the Defendant is given notice of the following:

- (a) The Defendant has the right to file a direct appeal to the Superior Court of Pennsylvania within thirty (30) days of entry of this Order;
- (b) The Defendant has the right to the assistance of counsel in the preparation of the appeal;
- (c) If the Defendant is indigent, he has the right to appeal *in forma pauperis* (without payment of costs) and to proceed with assigned counsel (without payment of counsel fees);
- (d) The Defendant has a qualified right to petition the Court for bail pending appeal, pursuant to Pa. R. Crim. P. 521(B).

BY THE COURT:


STEVEN T. O'NEILL

2018 OCT 23 PM 12:03

CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

Copy of the above Order
mailed on 10/23/18 to the following:

Kevin R. Steele, Esq.

Brian W. Perry, Esq.

Kristen J. Weisberger, Esq.


Secretary

EXHIBIT 8

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

COMMONWEALTH OF PENNSYLVANIA,	:	No. 166 MM 2018
	:	
Respondent	:	
	:	
v.	:	
	:	
WILLIAM HENRY COSBY JR.,	:	
	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 14th day of December, 2018, the Application for Relief, to the extent it seeks to amend Petitioner's Application for Supreme Court Review, is GRANTED. The Application for Supreme Court Review, as so amended, is DENIED.

EXHIBIT 9

EXHIBIT 10

CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

2018 DEC 11 PM 12:30

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: MONTGOMERY COUNTY, PENNSYLVANIA
:
vs. : NO: CP-46-CR-3932-2016
:
WILLIAM HENRY COSBY, JR. : CHARGE(S): AGGRAVATED
: INDECENT ASSAULT

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

TO THE HONORABLE STEVEN T. O'NEILL, JUDGE OF SAID COURT:

AND NOW, this 10th day of December, 2018, comes Brian W. Perry, Esquire, and Kristen L. Weisenberger, Esquire, on behalf of William Henry Cosby, Jr., who files the following Statement of Matters Complained of on Appeal:

1. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights by failing to excuse juror 11 where evidence was introduced of the juror's inability to be fair and impartial. Specifically, a prospective juror testified juror 11 prejudged guilty prior to the commencement of trial. Moreover, the trial judge abused its discretion, erred and infringed on Mr. Cosby's constitutional rights by refusing to interview all jurors who were in the room with juror 11 to ascertain whether they heard the comment and, if so, the impact that the comment had on them.

2. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights in allowing Dr. Barbara Ziv to testify as an expert witness pursuant to 42 Pa.C.S.A §5920 regarding an offense that occurred 12 years prior to the conception of that statute, and in violation of Mr. Cosby's rights under the fifth and sixth amendments of the Constitution of the United States, and under Article I, §§1, 9 and 17

of the Constitution of the Commonwealth of Pennsylvania where the statute is unconstitutional and not retroactive in application.

3. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights to Due Process of Law under the Constitution of the United States and under the Constitution of the Commonwealth of Pennsylvania by failing to disclose his biased relationship with Bruce Castor, and by failing to recuse himself as the presiding judge as a result of this biased relationship. Judge Steven T. O'Neill confronted Mr. Castor for, in his opinion, exploiting an affair in order to gain a political advantage in their 1999 political race for Montgomery County District Attorney. Mr. Castor's conduct as District Attorney in 2005, however, was a material and dispositive issue in this case; specifically, a significant question arose as to whether Mr. Castor agreed in 2005 that the Commonwealth would never prosecute Mr. Cosby for the allegations involving Andrea Constand and whether he relayed that promise to Mr. Cosby's attorneys. The defense alleged that the Commonwealth was precluded from prosecuting Mr. Cosby due to former District Attorney Bruce Castor's agreement to never prosecute Mr. Cosby for the Constand allegations. The trial court erred in failing to disclose his bias against District Attorney Castor, and in failing to recuse himself, prior to determining the credibility of former District Attorney Castor and whether he made said agreement. The trial court similarly erred in failing to disclose his bias or recuse himself prior to ruling upon the admissibility of the defendant's civil deposition, where the trial court was again determining the credibility of former District Attorney Castor.

4. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights to Due Process of Law under the Constitution of the United States and of the Commonwealth of Pennsylvania in denying the Petition for Writ of Habeas Corpus filed January 11, 2016, and failing to dismiss the criminal information where the Commonwealth, in 2005, promised to never prosecute Mr. Cosby for the Constand allegations. Moreover, given the agreement that was made by the Commonwealth in 2005 to never prosecute Mr. Cosby and Mr. Cosby's reliance thereon, the Commonwealth was also estopped from prosecuting Mr. Cosby.

5. The trial court erred in permitting the admission of Mr. Cosby's civil deposition as evidence at trial in violation of the Due Process Clause of the State and Federal Constitutions and in violation of Mr. Cosby's right against self-incrimination pursuant to the Fifth Amendment of the Federal Constitutions and Article I, §9 of the Constitution of the Commonwealth of Pennsylvania. Moreover, the prosecution was estopped from arguing the admission of the civil deposition at trial, as Mr. Cosby gave this deposition testimony in reliance on the promise by former District Attorney Castor that Mr. Cosby would never be prosecuted for the Constand allegations.

6. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights to Due Process of Law under the Constitution of the United States and of the Commonwealth of Pennsylvania in admitting five prior "bad act witnesses" pursuant to Pa.R.Evid. §404(b). The witness' allegations were too remote in time and too dissimilar to the Constand allegations to fall within the proper scope of Pa.R.Evid 404(b). Furthermore, during the first trial the trial court allowed one 404(b) witness;

however, after that trial resulted in a mistrial, the trial court allowed the Commonwealth, without explanation or justification, to call five 404(b) witnesses in violation of Mr. Cosby's Due Process rights under the State and Federal Constitutions.

7. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights under the Constitution of the United States and of the Commonwealth of Pennsylvania in allowing the Commonwealth to proceed with the prosecution of Mr. Cosby where the offense did not occur within the twelve year statute of limitations pursuant to 42 Pa.S.C.A. 5552 and the Commonwealth made no showing of due diligence. Moreover, the jury's verdict was against the weight of the evidence concerning whether the offense occurred within the twelve year statute of limitations. Furthermore, even if the alleged offense occurred within the twelve year statute of limitations, the delay in prosecuting Mr. Cosby caused him substantial prejudice and infringed on his Due Process rights under the Constitutions of the Commonwealth of Pennsylvania and of the United States, as a material witness to the non-prosecution agreement died within that twelve year period.

8. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights under the Due Process Clause of the Constitution of the United States and of the Commonwealth of Pennsylvania by permitting the Commonwealth to introduce Mr. Cosby's civil deposition testimony regarding Quaaludes. This testimony was not relevant to the Constand allegations; was remote in time; "backdoored" the admission of a sixth 404(b) witness; and constituted "bad act" evidence that was not

admissible. Furthermore, this testimony was highly prejudicial in that it included statements regarding the illegal act of giving a narcotic to another person.

9. The trial court abused its discretion, erred and violated Mr. Cosby's rights to Due Process of Law under the Constitution of the United States and of the Commonwealth of Pennsylvania by denying Mr. Cosby's objections to the trial court's charge and including or refusing to provide certain instruction. Specifically, the trial court abused its discretion, erred and violated Mr. Cosby's rights to Due Process of Law by: 1) providing to the jury an instruction on the "consciousness of guilt" where this charge was not appropriate to the facts before the jury; 2) refusing to provide an instruction, consistent with *Kyles v. Whitley*, 514 U.S. 419 (1995), that the jury may consider the circumstances under which the case was investigated; and 3) by failing to provide the jury the instruction on 404(b) witnesses as suggested by the defense; indeed, the trial court's charge effectively instructed the jury that Mr. Cosby was guilty of the uncharged alleged crimes and failed to properly explain how this uncharged, alleged misconduct should be considered. Moreover, the trial court abused its discretion, erred and violated Mr. Cosby's rights to Due Process of Law under the Constitution of the United States and of the Commonwealth of Pennsylvania by refusing to provide to the jury a special interrogatory on whether the offense occurred within the statute of limitations.

10. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights in finding that Mr. Cosby was a sexually violent predator pursuant to SORNA where the Commonwealth expert relied upon unsubstantiated, uncorroborated

evidence not admitted at trial; specifically relying on hearsay evidence that there were approximately 50 more women making allegations Mr. Cosby.

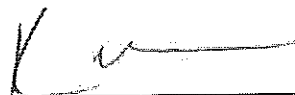
11. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights in applying the sexually violent predator provisions of SORNA (Act 2018-29) for a 2004 offense in violation of the *Ex Post Facto* Clauses of the State and Federal Constitutions.

Respectfully submitted,

PERRY SHORE WEISENBERGER & ZEMLOCK



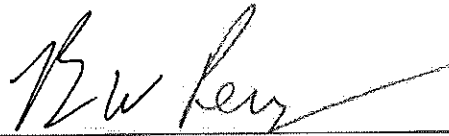
Brian W. Perry, Esquire
Supreme Court ID 75647
2411 North Front Street
Harrisburg, PA 17110
(717) 232-9900



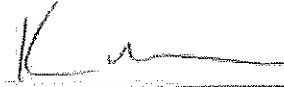
Kristen L. Weisenberger, Esquire
Supreme Court ID 84757
2411 North Front Street
Harrisburg, PA 17110
(717) 232-9900

CERTIFICATION

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



Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire

CERTIFICATE OF SERVICE


AND NOW, this 10th day of December, 2018, I hereby certify that I have served the foregoing STATEMENT OF MATTERS COMPLAINED OF ON APPEAL on the following via Federal Express:

Judge Steven T. O'Neill
Montgomery County Court House
P.O. Box 311
Norristown, PA 19404-0311

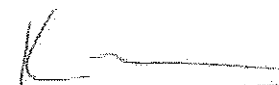
Kevin Steele, District Attorney
Montgomery County District Attorney's Office
Montgomery County Courthouse
4th Floor
P.O. Box 311
Norristown, PA 19404-0311

Robert Falin, Assistant District Attorney
Montgomery County District Attorney's Office
Montgomery County Courthouse
4th Floor
P.O. Box 311
Norristown, PA 19404-0311

Adrienne Jappe, Assistant District Attorney
Montgomery County District Attorney's Office
Montgomery County Courthouse
4th Floor
P.O. Box 311
Norristown, PA 19404-0311



Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire

EXHIBIT 11

AFFIDAVIT OF BRUCE L. CASTOR, JR., ESQUIRE

I, Bruce L. Castor, Jr., Esquire, provide this Affidavit to Attorneys Brian W. Perry and Kristen L. Weisenberger, in lieu of giving a compelled deposition, and with the knowledge that instead of my compelled deposition, this Affidavit will be attached as an Exhibit to a Petition for Review Pursuant to Pennsylvania Rule of Appellate Procedure 1762(b)(2), related to the criminal conviction of William H. Cosby, Jr., at docket CP-46-CR-3932-2016:

1. In 1998 and 1999, as Montgomery County First Assistant District Attorney, I campaigned for the Republican nomination for the position of Montgomery County District Attorney against Attorney Steven T. O'Neill, a private practitioner in Norristown, Pennsylvania.
2. In or about January or February of 1999, at the Upper Moreland Township Building in Willow Grove, Pennsylvania, I engaged in a debate against Steven T. O'Neill. At that point, I was not aware that Judge O'Neill was or had been engaged in an extramarital affair with a female Assistant District Attorney employed by the Montgomery County District Attorney. At the election debate at Upper Moreland Township Building in Willow Grove, Pennsylvania, the female Assistant District Attorney was present. Attorney O'Neill oddly seemed distracted, unfocused, and nervous in that debate, despite the fact that as a trial lawyer, he was an accomplished public speaker.
3. The next morning, I received a call from Montgomery County Republican Party Chairman Frank Bartle, who indicated that he had just received a call

from Bill Donnelly, a key supporter of Steven O'Neill's campaign for District Attorney of Montgomery County and the political leader of the Party that encompassed Upper Moreland Township. Mr. Donnelly informed Mr. Bartle who relayed it to me that he, Donnelly, thought placing the female Assistant District Attorney in the front of the debate to distract Steven O'Neill was playing dirty politics.

4. I responded to Mr. Bartle that no one on the campaign had anything to do with the female's attendance at the debate and that was the first time I learned Attorney O'Neill was having, or had, an affair with the female Assistant District Attorney who worked in my office.
5. In approximately February or March of 1999, I arrived at a political event at the Bay Pony Inn in Harleysville, Pennsylvania. Around 11:30 a.m. (I believe), I exited the political event with a number of individuals, including my wife, Frank Bartle, the Montgomery County Republican Party Chairman, his wife, and State Representative Bob Godshall. Our group encountered Steven O'Neill as he arrived to the event with a woman that I later learned was his wife. I specifically recall Bob Godshall asking Mr. O'Neill if the woman with him was his wife. This caused Mr. O'Neill to angrily accuse me, and the entire group, of running a smear campaign and trying to ruin his marriage and life. I remember Mr. O'Neill's wife saying similar things at that time. They both reacted with what I thought were overly dramatic gestures and language.

6. I eventually won the Republican Party endorsement for District Attorney of Montgomery County, causing Mr. O'Neill to withdraw his name from consideration from the election.
7. In the spring of 1999, I was nominated by the Republican Party to be its candidate for District Attorney of Montgomery County, Pennsylvania. In the fall of 1999, I was elected as District Attorney of Montgomery County.
8. There is no question in my mind that Mr. O'Neill blamed me and my political supporters for raising his marital infidelity in a "smear campaign" to defeat him in the election for Montgomery County District Attorney. It is my belief that Mr. O'Neill has never forgiven me for this.
9. I would describe my relationship with Mr. O'Neill over the next sixteen years as strained and tense. I would not describe the relationship as overtly hostile, however, since I seldom came in contact with him while serving two terms as District Attorney and two terms as Montgomery County Commissioner. Our paths rarely crossed.
10. Steven O'Neill was appointed to the Montgomery County bench in April 2002 by then Governor Mark S. Schweiker. He was later elected to a ten year term in 2004 and retained for another ten year term in 2014.
11. From 2002 until 2008, while I served as District Attorney of Montgomery County, I do not recall ever personally appearing in front of Judge O'Neill. I can say with certainty that I never handled a contested case of any significance before him because as District Attorney, I only personally

prosecuted a handful of cases each year year, and I would remember trying a contested matter of import before him. In fact, as I had the authority to assign prosecutors to cases, I would have assigned another prosecutor to any significant contested matter scheduled to occur before Judge O'Neill so as to avoid being put in a position where Judge O'Neill could embarrass or humiliate me and potentially damage a prosecution.

12. After I left the Office of the District Attorney and entered private practice, I do not recall appearing in front of Judge O'Neill as an attorney in any capacity. Again, I can say with certainty that I never represented a client in a contested matter before Judge O'Neill. But I don't think I ever handled any matter before him either as DA or in private practice. I suppose some matters are so routine that I might forget appearing before him, but I never appeared before him for anything contested that I can think of.

13. However, I do recall Judge O'Neill approaching me in my capacity as Montgomery County District Attorney seeking my support for a project known as drug court. Although I did not think at the time this program made good prosecutorial sense for the County, after repeated requests for my support, I relented. My approval was dispositive of drug court coming into being. If the DA would not agree to the institution of the program, it could not get off the ground. I believe that Judge O'Neill resented the fact that he had to ask me to support this program for it to be initiated.

14. I was elected Montgomery County Commissioner in 2007 and later reelected in 2011. In my capacity as Commissioner, I recall Judge O'Neill coming to see me in an attempt to gain my continued support for funding drug court program, which he strongly supported and had oversight of. I had made clear publicly that I thought drug court cost too much money for the limited number of people Judge O'Neill claimed as success stories. As a Commissioner coming from a prosecution background, I had serious misgivings concerning whether the continuation of drug court made prosecutorial and economical sense. Again, I relented. But, it is my belief that Judge O'Neill resented the fact that he needed to ask for my support for his drug court program.
15. Regarding the case of Commonwealth of Pennsylvania v. William H. Cosby, Jr., docket number CP-46-CR-3932-2016, I believe that Judge O'Neill assigned himself to this case in part because he knew that I made the decision not to prosecute Mr. Cosby in 2005 and I would be at the center of whether this case could proceed to trial.
16. On September 4, 2018, preceding defense counsel sent an investigator to interview me about whether Judge O'Neill has a personal animosity against me because he has never forgiven me, or my campaign, for thinking we used his extramarital affair during the campaign of 1999 for political gain when we both sought the post of District Attorney of Montgomery County. The investigator contacted me. I did not reach out to the Cosby defense team.

17. I was subpoenaed as a defense witness in a Petition for Writ of Habeas Corpus/Motion to Disqualify Montgomery County District Attorney's Office in front of Judge O'Neill on February 3, 2016. In that February 3, 2016 proceeding, it was evident to me there existed in the courtroom tremendous animosity from Judge O'Neill toward me from the moment that I took the stand. It was obvious from his tone and line of questioning that Judge O'Neill felt very negatively towards me. In fact, at one point during my testimony, I suggested that I not answer a particular question in public but instead *in camera* or at sidebar because I thought my answer would be inflammatory and affect future jurors in the case if publicly reported. In response, I perceived Judge O'Neill's facial expression towards me as one of disgust. He also made statements that he thought it was ridiculous that I would make such a statement. We went in camera and Judge O'Neill later ruled that I was to testify more vaguely than the full truth for the precise reason I stated was my reason for believing he should hear my answer *in camera* or a sidebar in the first place.

18. I believe that by finding that a non-prosecution promise did not exist, and by finding me "incredible," Judge O'Neill attempted to hurt me publicly and professionally as a political payback. At the time we ran against each other, Judge O'Neill was a heavyweight political operative from Lower Merion Township which had the most money and the largest single voting block of delegates to the nominating convention. I was a career civil servant who

entered politics only to run for DA. I believed that, and I still do, that Judge O'Neill felt he was "entitled" to the nomination for DA and that I had not "earned" my chance to run by working in the political trenches, my record of successes to that point as a prosecutor notwithstanding.

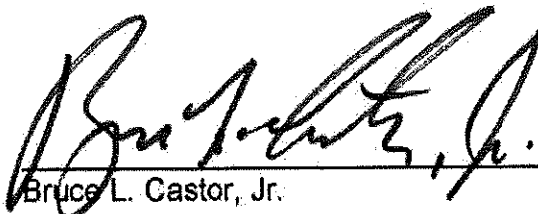
19. Regardless of innocence or guilt in this case, I believe that what happened to Mr. William Cosby should never happen to any American citizen in any American courtroom. I have been in and around government and the justice system for 37 years. In many ways I am a product of the system: completely beholden to the rule of law, the presumption of innocence, the burden of proof being on the government in criminal cases, and the Exclusionary Rule as a remedy for governmental constitutional violations. I am also absolutely a man of my word, and when I said to Cosby through his counsel the Commonwealth was not going to prosecute him, I meant just that: he could never take the Fifth Amendment because it was impossible for him to incriminate himself criminally, but he could incriminate himself civilly as occurred. As the chief law enforcement officer of Montgomery County, I intended to forever bind the Commonwealth of Pennsylvania from a future prosecution of Mr. Cosby related to the facts and circumstances of the case involving Andrea Constand. I believed at the time that the allegation was made that there was insufficient evidence to convict Mr. Cosby on the facts as presented to me, something that time has shown was an accurate assessment. My goal was to obtain some measure of justice by assisting a

civil resolution and forcing Mr. Cosby to testify and give evidence in a civil case that I knew would be filed. Because I, as the District Attorney of Montgomery County, decided that Mr. Cosby would not be prosecuted for these alleged crimes, he would not have been able to assert his Fifth Amendment protection in any civil proceeding related to the anticipated civil suit. Had he tried, I would have certified to the presiding judge that Cosby was not going to be prosecuted ever, thus ensuring that nothing Cosby said could prove incriminating and opening him up to having his testimony compelled.

20. I clearly communicated my intention to Mr. Cosby's attorney at the time, Walter Phillips who, as a former high level prosecutor himself and long time criminal defense lawyer, immediately understood the ramifications to Cosby civilly. There is no question that Mr. Cosby relied upon my representation when he submitted to depositions in the civil case related to the allegations made by Ms. Constand. Indeed, it strains credulity that given Cosby's resources and access to able counsel, there is any other reason but for my representation that Cosby would fail to invoke his Fifth Amendment protections. Indeed, Constand's civil counsel, who took Cosby's deposition and knew what he had said that was incriminating for a criminal case, never asked me to review it with an eye toward re-opening the Cosby investigation.

I swear and affirm that these facts are true and correct to the best of my knowledge.

10/20/18
Date


Bruce L. Castor, Jr.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MONTGOMERY

Sworn to and subscribed

before me this 20th day

of October, 2018


Notary Public

My commission expires: April 2, 2022.

Commonwealth of Pennsylvania - Notary Seal
Melanie Altemus, Notary Public
Montgomery County
My commission expires April 2, 2022
Commission number 1255142
Member, Pennsylvania Association of Notaries

EXHIBIT 12

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : No. 3932-16
v. :
WILLIAM H. COSBY, JR. :

2018 SEP 19 PM 12:10
CLERK OF COURT
MONTGOMERY COUNTY
PENNSA.

MEMORANDUM OPINION AND ORDER SUR RECUSAL

O'NEILL, J.

September 19, 2018

On September 11, 2018, the Defendant filed a "Motion for Disclosure, Recusal and for Reconsideration of Recusal ("Motion") and supporting Memorandum of Law. The Commonwealth filed a "Response to the Motion for Disclosure, Recusal, and For Reconsideration of Recusal," ("Response"), on September 13, 2018.

In his Motion, the Defendant asks the Court to: 1) make a disclosure related to a witness; 2) vacate the February 4, 2016 Order denying his Petition for a Writ of Habeas Corpus,¹ and recuse itself from further proceedings; and 3) reconsider the denial of his prior recusal motion.²

"A motion for disqualification is directed to and decided by the jurist whose impartiality is questioned." League of Women Voters of Pennsylvania v. Commonwealth, 179 A.3d 1080 (Pa. 2018) (citing Commonwealth v. Travaglia, 661 A.2d 352, 370 (Pa. 1995)).

¹ On January 11, 2016, the Defendant filed a "Petition for a Writ of Habeas Corpus and Motion to Disqualify the Montgomery County District Attorney's Office," ("Petition") and supporting Memorandum of Law, seeking, *inter alia*, to have the charges dismissed on the basis of a non-prosecution agreement. A hearing on this issue was held on February 2 and 3, 2016.

² "Defendant's Motion for Recusal of The Honorable Steven T. O'Neill and Request for Reassignment" was filed on March 21, 2018 and denied March 29, 2018.

It is well settled that,

[t]here is a presumption that judges of this Commonwealth are honorable, fair and competent, and, when confronted with a recusal demand, are able to determine whether they can rule in an impartial manner, free of personal bias or interest in the outcome. If the judge determines he or she can be impartial, the judge must then decide whether his or her continued involvement in the case creates an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only the jurist can make. A judge's decision to deny a recusal motion will not be disturbed absent an abuse of discretion.

Lomas v. Kravitz, 130 A.3d 107, 122 (Pa. Super. 2015), aff'd, 170 A.3d 380 (Pa. 2017) (citations and internal quotations omitted).

Furthermore, courts have consistently held that, “[i]n this Commonwealth, a party must seek recusal of a jurist at the earliest possible moment, *i.e.*, when the party knows of the facts that form the basis for a motion to recuse. If the party fails to present a motion to recuse at that time, then the party's recusal issue is time-barred and waived.” Lomas v. Kravitz, 170 A.3d 380, 390 (Pa. 2017). “Notably, [the Pennsylvania Supreme Court] has held that, in addition to actual knowledge of the facts underlying the application, facts that ‘should have been known’ are to be considered in determining timeliness.” League of Women Voters, 179 A.3d at 1087 (citation omitted). Courts conduct a waiver analysis because,

[l]itigants cannot be permitted to hedge against the possibility of losing a case on the merits by delaying the production of arguable grounds for disqualification, or, worse, by digging up such grounds only after learning of an adverse order. To hold otherwise would encourage judge-shopping, would undermine the interests in the finality of judicial decisions, and would countenance extensive and unnecessary expenditures of judicial resources, which are avoidable by mere timely advancement of the challenge. The courts of this Commonwealth cannot and do not approve of such gamesmanship.

Id. at 1086; Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority, 489 A.2d 1291, 1300 (Pa. 1985) (citation omitted) (stating, “[o]nce the trial is completed with the entry of a verdict, a party is deemed to have waived his right to have a judge disqualified, and if he has waived that issue, he cannot be heard to complain following an unfavorable result”). Where a recusal motion is based upon purportedly after-discovered evidence, the Pennsylvania Supreme Court has held that, “as in other cases involving after discovered evidence, there must be a showing that... the evidence could not have been brought to the attention of the ... court in the exercise of due diligence.” League of Women Voters, 179 A.3d at 1087 (quoting Reilly, 489 A.2d at 1301). Defendant’s post-verdict,³ presentence Motion is both time-barred and meritless.

First, the Motion is untimely and, thus, waived. This case commenced with the filing of a Criminal Complaint on December 30, 2015. Numerous pretrial hearings were held, beginning with the first hearings on February 2 and 3, 2016. The Defendant was represented by a total of 7 attorneys at various times, through the commencement of jury selection on May 22, 2017. The first trial ended in a mistrial on June 17, 2017. Thereafter, Defendant replaced his entire Defense team with 8 new lawyers who represented Defendant at various times through commencement of the

³ The Rules of Criminal Procedure provide for an oral Motion for Extraordinary Relief prior to sentencing seeking an arrest of judgment, judgment of acquittal, or a new trial. Pa. R. Crim. P. 704 (B). The Motion does not comport with that rule and is, therefore, procedurally improper as well. Appellate courts have repeatedly stated “this Rule was not intended to provide a substitute vehicle for convicted defendant to raise matters which could otherwise be raised via post sentence motions.” Commonwealth v. Howe, 842 A.2d 436, 441, (Pa. Super. 2004) (citations omitted). The Defendant seeks to revisit a pretrial ruling, under the guise of a motion to recuse; he may challenge that ruling via the appropriate post-sentence procedures.

second trial, and vigorously pursued many additional pre-trial motions on Defendant's behalf. As noted above, the Defendant filed a recusal motion on March 21, 2018, which was denied following a hearing on March 29, 2018.

The second trial commenced with jury selection on April 2, 2018. On April 26, 2018, the jury found the Defendant guilty of three counts of Aggravated Indecent Assault (18 Pa. C.S.A. § 3125). By Order of May 15, 2018, this Court set sentencing for September 24 and 25, 2018. Defendant's current counsel entered his appearance on June 14, 2018 and did not file the within Motion until September 11, 2018.

The sum and substance of the Motion is based on a March 28, 2018, unsourced tabloid article posted by "Radar Online," a website described by the Defendant as an "internet gossip site." (Motion ¶ 7). The article was posted the day before this Court held a hearing on the Defendant's prior recusal motion, and four days before the start of his second trial. The Defendant's spokesperson is quoted in the article. (Motion, Exhibit "A" at 4). As noted in the Commonwealth's Response, the Defendant's spokesperson accompanied the Defendant to every court appearance, observed the proceedings, and frequently spoke on the Defendant's behalf to the media. (Response at 5). Clearly, the Defendant was aware, or should have been aware, of the basis for the instant motion in March of 2018 at the latest, *prior to the commencement of his retrial*. Furthermore, the fact that this Court sought a party nomination for the Office of District Attorney nearly twenty years ago is a fact of public record that could easily be uncovered in the exercise of due diligence by no less than 15 attorneys (and their private investigators) acting in the capacity of Defendant's legal counsel. Therefore, the Motion is untimely as a matter of Pennsylvania law.

Even assuming, *arguendo*, the Court had a duty to disclose that a witness was a political opponent nearly twenty years ago, basing the Motion on the Court's duty to disclose does not overcome the failure to file the Motion at the earliest possible date. See League of Women Voters, 179 A.3d at 1088 (quoting Reilly, 489 A.2d at 1301) (“[S]imply because a judge does not raise *sua sponte* the issue of his impartiality, however, does not entitle a party to question a judge's partiality after the case has ended without substantiation in the record that the complaining party did not receive a full, fair, and impartial trial”).

Even if this unsubstantiated claim, raised on the eve of sentencing, is not waived, it is facially meritless. Accordingly, a hearing is neither required nor necessary. (See Pa. R. Crim. P. 577 and 704). “The party who asserts that a trial judge must be disqualified must produce evidence establishing bias, prejudice, or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.” Lomas v. Kravitz, 130 A.3d 107, 122 (Pa. Super. 2015), aff'd, 170 A.3d 380 (Pa. 2017) (citations and internal quotations omitted). The Motion and supporting memorandum of law do nothing more than assert that this Court *should* have a bias, based on the campaign tactics of a witness twenty years ago, that somehow precluded the Court from making credibility determinations at a hearing in this case 31 months ago. This claim is wholly without merit.

The undersigned has served on the Montgomery County Court of Common Pleas since July, 2002. For the first six years of this Court's tenure, 2002-2008, Mr. Castor served as the District Attorney of Montgomery County. Not once during his tenure as District Attorney was Mr. Castor, or anyone else, heard to ascribe some sort of

“grudge” or prejudice against Mr. Castor in any criminal matter that came before this Court. Likewise, since 2009, Mr. Castor has, on occasion, appeared before this Court as a criminal defense attorney and has never sought disclosure or disqualification of the Court because of some perceived bias or “grudge” against him. No “grudge,” animus, bias or prejudice can be claimed because it simply does not exist.

Defense counsel’s conclusory statement that any credibility determinations made by the Court as to [all] witnesses who testified “was an express finding that the testimony of the former District Attorney, Mr. Castor, was not credible” is simply false, with no basis in fact. (Motion ¶ 5). The Court carefully weighed the testimony of each of the witnesses⁴ at the February 2 and 3, 2016 hearing on the Petition for a Writ of Habeas Corpus, and applied the applicable law, in denying the portion of the Petition seeking dismissal of the charges. This Court’s ruling on the Petition, as stated on the record and memorialized in the order of February 4, 2016, and its subsequent “Findings of Fact, Conclusions of Law and Order Sur: Defendant’s Motion to Suppress⁵ Evidence Pursuant to Pa. R. Crim. P. 581 (I),” docketed December 5, 2016, were not based solely on the Court’s credibility assessment of any individual witness, but rather

⁴ In addition to Mr. Castor, John P. Schmitt, Esq, testified on behalf of the Defendant. Dolores Troiani, Esq., and Bebe Kivitz, Esq., were called by the Commonwealth.

⁵ Defendant’s “Motion to Suppress The Contents Of His Deposition Testimony and Any Evidence Derived Therefrom on the Basis that the District Attorney’s Promise Not to Prosecute Him Induced Him to Waive His Fifth Amendment Right Against Self-Incrimination” was filed on August 12, 2016. A hearing was held on November 1, 2016. No new evidence was presented at the hearing. Rather, the Notes of Testimony from the February 2 and 3, 2016 hearing on the Defendant’s “Petition for Writ of Habeas Corpus and Motion to Disqualify the Montgomery County District Attorney’s Office,” and a series of stipulations were admitted as evidence sufficient to dispose of the Motion to Suppress.

on the testimony of all witnesses and ultimately rested on the legal insufficiency of the evidence presented by the defendant in support of his motions.

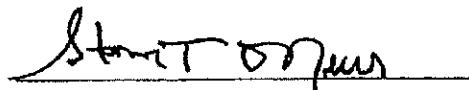
In regards to Section III of the Motion, seeking a reconsideration of this Court's ruling on the Defendant's prior Motion to Recuse filed March 21, 2018, and denied March 29, 2018, the Court's findings, statements and reasons for said denial which were placed on the record on March 29, 2018 are incorporated herein by reference. Nothing raised by the Defendant warrants reconsideration of the Court's previous denial.

Finally, even though this Court believes the claim to be waived, the Court nevertheless undertook conscientious reflection on claims raised in the Motion. Throughout the pendency of this matter, and in every matter over which this Court presides, this Court is sensitive to its obligations under the Code of Judicial Conduct, and takes these obligations very seriously. This Court is confident that it has and can continue to assess this case in an impartial manner, free of personal bias or interest in the outcome. This Court simply has no bias against any witness called by the defense or the Defendant himself. This Court finds no merit in any of the bases alleged by the Defendant and the Court will not recuse itself. Based on the foregoing, the Court issues the following:

ORDER

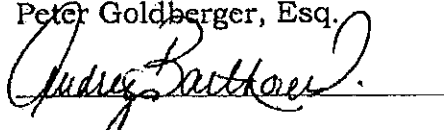
And now this 19th day of September, 2018, upon consideration of the Defendant's Motion for Disclosure, Recusal and For Reconsideration of Recusal, and supporting Memorandum of Law, filed September 11, 2018, and the Commonwealth's Response thereto, filed September 13, 2018, it is hereby **ORDERED** and **DECREED** that the Motion is **DENIED** in its entirety.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Steven T. O'Neill", written over a horizontal line.

STEVEN T. O'NEILL, J.

Copies of this Order mailed on 9/19/18 to the following:
Joseph P. Green, Esq.
Kevin R. Steele, Esq.
Peter Goldberger, Esq.

A handwritten signature in black ink, appearing to read "Audrey Barthelemy", written over a horizontal line.

Secretary

EXHIBIT 13

IN THE COURT OF COMMON PLEAS
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA:

vs.

WILLIAM H. COSBY, JR.

:
: NO. MD-3156-15
:
:

PETITION FOR WRIT OF HABEAS CORPUS/MOTION TO
DISQUALIFY MONTGOMERY COUNTY DISTRICT ATTORNEY'S
OFFICE

Courtroom A
Tuesday, February 2, 2016
Commencing at 9:45 a.m.

Virginia M. Womelsdorf, RPR
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

COUNSEL APPEARED AS FOLLOWS:

KEVIN R. STEELE, ESQUIRE
M. STEWART RYAN, ESQUIRE
KRISTEN M. GIBBONS-FEDEN, ESQUIRE
Assistant District Attorneys
for the Commonwealth

BRIAN J. MCMONAGLE, ESQUIRE
CHRISTOPHER TAYBACK, ESQUIRE
MONIQUE PRESSLEY, ESQUIRE
JOSEPH SARLES, ESQUIRE
for the Defendant

I N D E XDEFENDANT'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
BRUCE L. CASTOR, JR.		12	111	239	

- - -

E X H I B I T SCOMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-1	ABC News "New Developments in Cosby Fondling Investigation"	130	
C-2	Pottstown Mercury article "Cosby meets with authorities over sex assault allegations"	138	
C-3	Bloomberg.com article dated November 26th, 2014 "Why Did Bruce Castor Pass on a Chance to Lock Up Bill Cosby?"	147	
C-4	Southeast Missourian article dated January 27, 2005 "Prosecutor calls case against Bill Cosby weak"	152	
C-5	Daily Mail article published November 18, 2014, "I wanted to arrest Bill Cosby"	158	
C-6	Washington Post article dated November 19, 2014 "Prosecutor who declined to charge Bill Cosby in 2005: 'I didn't say that he didn't commit the crime'"	165	
C-7	CNN video	169	
C-8	WNPV audio	173	

E X H I B I T SCOMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-9	Philly.com article dated September 14, 2015 "Time hasn't run out on possible charges against Cosby in Pa."	176	
C-10	People.com article dated 10-22-15 "Pennsylvania District Attorney Candidates Battle it Out Over the 2005 Bill Cosby Sexual Assault Allegations"	179	
C-11	The Intelligencer article dated September 24, 2015 "Montgomery DA candidate Castor urges delay n Cosby case until after elections"	197	
C-12	Philly.com article dated 1-31-16 "Castor could be key witness at Cosby hearing"	218	

DEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-1	Castor's biography from 2016 campaign website	19	19
D-2	Castor's biography from law firm website	19	
D-3	Canadian Incident Report	35	
D-4	Press Release dated 2-17-05	70	
D-5	E-mail dated September 23, 2015 to Risa Ferman from Bruce Castor	96	
D-6	Letter dated September 25, 2015 to Bruce Castor from Risa Vetri Ferman	104	

E X H I B I T SDEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-7	E-mail dated September 25, 2015 to Risa Ferman from Bruce Castor	106	
D-8	E-mail dated September 25, 2015 to Risa Ferman from Bruce Castor	108	

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2 (The following proceedings were
3 commenced with the Court, Mr. Steele, Mr. Ryan, Ms.
4 Gibbons-Feden, Mr. McMonagle, Mr. Tayback, Ms.
5 Pressley, Mr. Sarles, and the defendant being
6 present:)

7 - - -

8 THE COURT: Good morning.
9 Again, I want to thank the members of the press,
10 journalists, media. There is a Decorum Order that has
11 been in place, and my understanding is everybody has
12 respected it, followed it. Again, that was
13 promulgated by our president judge and through our
14 court administrator, so I thank all the members of the
15 press that have followed that to keep this in an
16 orderly process and to the members of the public that
17 have been able to abide by that.

18 Let the record reflect that we
19 did have a brief prehearing conference with counsel
20 just to try to get an idea of how we will proceed this
21 morning. The Court had previously issued an order
22 that was limiting the nature of today's proceeding to
23 the claim raised in the Habeas Corpus Petition of the
24 defense that there was a valid existing
25 non-prosecution agreement and that that would affect

1
2 you reference that you had read something in the
3 newspaper. And after you compliment Ms. -- then
4 District Attorney Ferman, you then say: So you almost
5 certainly know this already. I'm writing to you just
6 in case you might have forgotten what we did with
7 Cosby back in 2005. Attached is my opinion from then.

8 Is that correct?

9 A That's correct.

10 Q You then in the next paragraph say: Once we
11 decided that the chances of prevailing in a criminal
12 case were too remote to make an arrest, I concluded
13 that the best way to achieve justice was to create an
14 atmosphere where Andrea would have the best chance of
15 prevailing in a civil suit again Cosby.

16 And that obviously you testified
17 to much of the morning; is that correct?

18 A That's correct.

19 Q With the agreement of Wally Phillips and Andrea's
20 lawyers, I wrote the attached as the only comment I
21 would make while the civil case was pending. Again,
22 with the agreement of the defense lawyer and Andrea's
23 lawyers, I intentionally and specifically bound the
24 Commonwealth that there would be no state prosecution
25 of Cosby in order to remove from him the ability to

1
2 claim his Fifth Amendment protection against
3 self-incrimination, thus forcing him to sit for a
4 deposition under oath.

5 Did I read that correctly?

6 A You did.

7 Q And that's what you did?

8 A Correct. That was not an agreement. That was a
9 statement from me that Mr. Cosby would not be
10 prosecuted by the Commonwealth of Pennsylvania and
11 that, as a matter of law, removed from him the ability
12 to claim his Fifth Amendment protection against
13 self-incrimination.

14 So I am telling District
15 Attorney Ferman that there wasn't any quid pro quo
16 here. This was a definitive statement by the
17 Commonwealth and, as a result thereof, Mr. Cosby would
18 be required by law to testify without Fifth Amendment
19 protection.

20 Q Right. A decision by you to never prosecute
21 Cosby articulated to his lawyer that was then
22 obviously relied upon in submitting in the deposition;
23 correct?

24 A I would assume, yeah.

25 Q Yeah.

1
2 A Cosby would have had to have been nuts to say
3 those things if he thought there was any chance of
4 being prosecuted.

5 Q Well, more importantly, after you communicate to
6 Mr. Phillips that he's never going to be prosecuted
7 and removing his Fifth Amendment right, then in fact
8 it's clear that it was relied upon and that he
9 testified; correct?

10 A I think he testified even more than once.

11 Q Let me move on: Wally was speaking for Cosby's
12 side at the time, but he was in contact with Cosby's
13 civil lawyers who did not deal with me directly that I
14 recall. I only discovered today that Wally had died.

15 A Well, yeah, that was sort of embarrassing because
16 I wanted to get ahold of Wally when I saw in the
17 newspaper that there was the possibility that Cosby's
18 arrest could be imminent. I wanted to call Wally up
19 and say to him, you know, do I have something wrong
20 here, because I was absolutely positive of what I did.

21 And I put in Google, and the
22 first thing that came up was his obituary. I
23 discovered that he had died in February. I felt badly
24 that I didn't know that because he and I had served on
25 the Judicial Reform Commission in Philadelphia and I

1
2 liked him.

3 THE COURT: Ready to take a
4 break?

5 MR. McMONAGLE: Yes, sir.

6 THE COURT: All right. It's
7 12:30 and I want to keep to a schedule here. And
8 we've been going -- many of you have been sitting here
9 for a long time.

10 Now, this is a luncheon break.
11 This is not a situation where there's a jury, so I
12 don't have to give any kind of cautionary instructions
13 to a jury, but the only cautionary instructions that I
14 have for the members of the public and press is follow
15 the Decorum Order. Again, that was put together with
16 a great deal of thought and it is an Order of Court.

17 As to the parties, Mr. Castor,
18 you are a witness under oath. You are not to speak
19 with anyone while you are waiting to return to
20 continue with direct examination and subsequent
21 cross-examination.

22 Essentially use this time to go
23 get lunch, stretch your legs, file reports if that's
24 what you need to do, and we will start as close to
25 1:30 as we can.

1
2 that is what I still think today.

3 But you are missing the point.
4 If I was referring to the Constand case, I would have
5 written: Naturally, if the prosecution could be made
6 out without using what Cosby said or anything derived
7 therefrom, I believe then and I believe now is not
8 precluded.

9 "A prosecution" refers to other
10 victims, not Constand, that occurred in Montgomery
11 County. And I thought that with the enormous
12 publicity of the 50 or so potential victims that maybe
13 they had one in Montgomery County and then they could
14 prosecute that one, but they simply couldn't use the
15 deposition or the -- anything derived therefrom.

16 MR. RYAN: I don't have any
17 further questions, Your Honor.

18 THE COURT: I have a couple
19 questions and then I'll open it back up for redirect.

20 MR. McMONAGLE: Yes, sir.

21 THE COURT: Let me start with
22 that. You believe that that statement was that there
23 could be other cases in 2015 of other potential
24 victims that may have arisen that you knew nothing
25 about that Mr. Cosby may have disclosed in his

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deposition testimony?

THE WITNESS: No. I was reading, like everyone else, all of these women coming forward saying that they had been molested. I thought that if any of them had been molested in Montgomery County --

THE COURT: You mean sexual assault. Molest is not a charge; correct? I want to make sure. It's not an indecent assault, sexual assault. I just want to make sure that we're talking about -- molestation is not a charge under the Crimes Code, is it, because the words are important here?

If you'd made an agreement regarding a charge that didn't exist -- you mean sexual assault of some sort?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: So what I'm -- in that last paragraph, what I'm trying to convey to Mrs. Ferman is my binding of the Commonwealth not to prosecute Cosby was not for any crime in Montgomery County for all time. It was for only the sexual assault crime in the Constand case.

So if they had evidence that

1
2 some of these other women had been sexually assaulted
3 at Cosby's house in Cheltenham, then I thought they
4 could go ahead with the prosecution of that other case
5 with some other victim, as long as they realized they
6 could not use the Constand deposition and anything
7 derived therefrom.

8 THE COURT: But she wasn't
9 soliciting your opinion about prosecution of unrelated
10 cases. We agree with that? I'm just trying to --
11 you've said it and that's obvious. If it has nothing
12 to do with the Constand case and has nothing to do
13 with the Cosby deposition, then the District Attorney
14 is free to prosecute any case it wants.

15 Is my understanding of that
16 correct? You don't have to tell her, hey, prosecute
17 any case you want, just not the Constand case. That's
18 what you mean by that?

19 THE WITNESS: No, not exactly,
20 because if -- you've got to -- if the D.A.'s Office
21 had gotten to this other victim or gathered evidence
22 on this other victim by using what Cosby had said in
23 the Constand deposition or anything derived therefrom,
24 she had to be cautious and separate that out before
25 moving on that other victim.

1
2 THE COURT: You also mentioned
3 possibly that if she would have an independent basis
4 for a perjury charge. You mentioned that?

5 THE WITNESS: I did.

6 THE COURT: Now, where -- my
7 understanding from everything that I've read is that
8 there was never any statement that was taken under
9 oath by Mr. Cosby, is that correct, in your
10 investigation of the Constand case?

11 THE WITNESS: No.

12 THE COURT: Let me just make
13 sure. There was no statement under oath in the
14 original investigation? They were statements to the
15 police?

16 THE WITNESS: Right.

17 THE COURT: And if there had
18 been a statement under oath by Mr. Cosby, that would
19 be different than his statement to the police, that
20 might be a basis for a perjury; would it not?

21 THE WITNESS: Correct.

22 THE COURT: Now, if he gave a
23 statement in his September depositions, in his
24 depositions while he was under oath, that was
25 different from his statement that he gave the

1
2 officers.

3 Are you saying that's the
4 perjury?

5 THE WITNESS: Yes.

6 THE COURT: But that's derived
7 from the very statements that you were encouraging him
8 to give in a deposition, is it not? It's derived.
9 It's a crime. He's saying that I didn't do it.

10 You meant to bar his prosecution
11 for this case so as to encourage him to give a
12 deposition. If he then gave the deposition and it
13 differed with the statements that you had in your
14 file, are you saying you'd turn around and she should
15 as well prosecute him for perjury?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Let me make
18 sure that I'm clear. Are you now saying that there
19 was no agreement not to prosecute? I've heard you say
20 that a number of times, there was no agreement not to
21 prosecute.

22 THE WITNESS: Correct.

23 THE COURT: There was a decision
24 by you not to prosecute.

25 THE WITNESS: Correct.

1
2 THE COURT: And you gave all
3 your reasons for doing that. And so at that stage you
4 did that because you wanted to strip Mr. Cosby of all
5 his Fifth Amendment rights; is that correct?

6 THE WITNESS: For all time in
7 that case.

8 THE COURT: In that case. Now,
9 for instance, if he had gone and -- one other thing.
10 There was no civil case at that time; is that right?

11 THE WITNESS: Yet.

12 THE COURT: There was no civil
13 case filed by the plaintiffs at this stage. You made
14 your press release on February 7th. There was no
15 filed civil case in the Eastern District of
16 Pennsylvania at that time; is that correct?

17 THE WITNESS: Yes.

18 THE COURT: It is correct there
19 was not. And you had learned from whom that there was
20 a possibility of a case?

21 THE WITNESS: I believe it was
22 from Andrea's lawyer's comments in the newspaper and
23 Mrs. Ferman, and the deduction that I concluded that
24 Andrea and her mother were trying to extort money from
25 Cosby to keep from going to the police.

1
2 THE COURT: So there was no
3 case. And the depositions, in fact, didn't occur
4 until September, is that right, when there eventually
5 was filed a case?

6 THE WITNESS: I think the case
7 was filed in March.

8 THE COURT: That's correct. And
9 then the depositions that you wanted to strip him of
10 any claim of the Fifth Amendment had not even been
11 scheduled? This wasn't imminent or pending or people
12 were coming to you saying, well, we want to move
13 forward? There's nothing there? You were looking to
14 the future?

15 THE WITNESS: Correct.

16 THE COURT: And in doing so, if
17 at that stage other cases had come out, because there
18 were cases that were out there, you had made a
19 statement that they didn't go to the police, so
20 therefore they may not be, but there were other at
21 least allegations out there; is that correct?

22 THE WITNESS: Yes.

23 THE COURT: And if they occurred
24 in some other state, California, that somebody made a
25 statement, but maybe they didn't go to the police, and

1
2 the plaintiff's lawyers began to ask him questions
3 under a deposition about criminal conduct, you would
4 not believe that that would be any basis for your
5 statement that you wanted to strip him of his Fifth
6 Amendment rights to raise the Fifth Amendment; is that
7 correct? He can raise the Fifth Amendment any time he
8 wants, couldn't he?

9 THE WITNESS: For any
10 incriminating evidence in any other case apart from
11 Constand.

12 THE COURT: But assuming that
13 you didn't prosecute. There had not been a civil case
14 filed. It wasn't filed until almost a month after you
15 made your press release. And in a deposition in
16 September, if he just chose on advice of then counsel
17 to say I stand on my Fifth Amendment rights, there is
18 nothing that you could do about that because you're
19 the District Attorney of Montgomery County. You're
20 not counsel in the case. There's just nothing you
21 could do about it.

22 THE WITNESS: That's not true,
23 Your Honor. What would happen in that circumstance,
24 and has happened, is the plaintiff's lawyers go and
25 complain to the judge that the exercise of the Fifth

1
2 Amendment is improper.

3 The judge then would ascertain
4 the questions that were objected to under the Fifth
5 Amendment and then would ascertain from -- if they
6 were involved in the Constand case, ascertain from me
7 that there would be no prosecution and order Cosby to
8 testify on those issues.

9 THE COURT: The question was,
10 you could do nothing about it. You couldn't order him
11 to testify. You couldn't do anything other than be a
12 witness in some case in which some judge in the
13 Federal Court would have to make a decision as to
14 whether he was granted immunity from that testimony,
15 but there's nothing you could do about it. You would
16 be a witness, much the way you are here.

17 THE WITNESS: In my experience,
18 it has not worked that way. In my experience, the
19 judge has called and said, "Are you going to
20 prosecute?" I would tell him no and he orders them to
21 go ahead.

22 THE COURT: I'm not sure -- I've
23 never experienced that, but in Pennsylvania we have an
24 immunity statute, don't we? You're familiar with it?

25 THE WITNESS: Is that a question

1
2 for me, Your Honor?

3 THE COURT: Yeah. You're
4 familiar with the immunity statute, which is 5947 of
5 Purdon's?

6 THE WITNESS: Your Honor, on the
7 issue of immunity, that is for use and derivative use
8 immunity only. At common law, the sovereign has both
9 the power of transactional immunity and use and
10 derivative use immunity.

11 THE COURT: I'm familiar with
12 it. I'm just trying to get to your point. Let me ask
13 you -- look, it wasn't utilized in this case because
14 you never even charged Mr. Cosby, and you didn't
15 charge him because you made independent reasons.

16 Let me get to this. If you felt
17 there was an agreement, why did you not make that
18 agreement in writing with the plaintiff's attorney,
19 with Mr. Phillips, yourself, create a miscellaneous
20 docket number and simply file it away?

21 Why did you not do that, because
22 your intention was to bar prosecution at all times? I
23 mean, do you know why you didn't do that?

24 THE WITNESS: The -- it was
25 unnecessary because I concluded there was no way that

1
2 the case could ever get any better. And if
3 Mr. Phillips and Mr. Cosby's lawyers wanted more than
4 that to protect themselves, it was up to them to
5 provide it. But the plaintiff's are not party to any
6 of that because the litigants are the Commonwealth and
7 the suspect.

8 The utilization of the statute
9 requires permission of the Court, and I did not want
10 to -- first of all, there was no judge to file it in
11 front of.

12 THE COURT: Well, in this
13 county, you know, there's miscellaneous dockets for
14 all kinds of seizures of property where a person never
15 gets prosecuted, but somebody makes a deal that we'll
16 give you back \$5,000, we'll keep him, and we want a
17 judge's signature on them.

18 I mean, you can create
19 miscellaneous dockets and do whatever you want.
20 That's your experience at least with forfeitures,
21 isn't it?

22 THE WITNESS: It is. And I
23 don't want to argue with the Court.

24 THE COURT: It's not an
25 argument. I'm not -- really, I'm just trying to

1
2 wonder that if this agreement existed and we
3 definitely have, you know, this -- I recognize your
4 common law immunity of witnesses, but we have a
5 statute that talks about how to do it.

6 THE WITNESS: No. I disagree,
7 Your Honor. There are two types of immunity in
8 Pennsylvania. There's transactional immunity and use
9 and derivative use immunity. At common law, the
10 sovereign has both.

11 The legislature has taken that
12 power -- has taken the use and derivative use immunity
13 power away from the sovereign so that you -- if you're
14 going to grant use and derivative use immunity, the
15 sovereign has to go and ask permission of the Court
16 and explain why.

17 THE COURT: Exactly. You
18 just -- at this stage you felt you didn't have to do
19 it. I understand it. I'm not -- I'm trying to find
20 out if there were mechanisms that were at least in
21 existence, something to memorialize what we're doing
22 10 years later in trying to put together whether there
23 was an express agreement not to prosecute. Really, I
24 mean, I understand it.

25 If you wanted to create it, I'm

1 asking were you aware of -- obviously there's a
2 statute that does deal with use immunity in
3 Pennsylvania; not specific to this case, but it was a
4 way to at least get a judicial sanction on it or
5 judicial approval of it. You file it away and you
6 bring it out should something like this ever occur.

7
8 You just felt it was not
9 available to you?

10 THE WITNESS: I felt it was
11 not -- I felt it was not appropriate for several
12 reasons. The first is the civil case hadn't been
13 filed. And in order to go and seek use and derivative
14 use immunity in a civil court, you'd have to go to the
15 federal judge. You'd have to ask him to grant use and
16 derivative use immunity. Not a Montgomery County
17 judge. So he's utilizing a Pennsylvania statute.
18 That's number one.

19 Number two, from Cosby's point
20 of view, the request for immunity would be a
21 suggestion in the Court of Public Opinion that he had
22 done something wrong and he, therefore, needs
23 immunity.

24 And number three, I didn't want
25 there to be use and derivative use immunity. I wanted

1
2 there to be the equivalent of transactional immunity,
3 which by default lays solely with the sovereign and
4 does not lay with the Court, because the legislature
5 took the power of use and derivative use immunity
6 granting away from the sovereign and requires
7 application to the Court and approval of the Court.

8 In order to achieve approval of
9 the Court, I would have had to tell the Court in
10 public filings that the victim in this case had
11 engaged in conduct that drastically damaged her
12 credibility. That would have been publicized and it
13 would have acted as a deterrent for other victims
14 coming forward.

15 THE COURT: All right. I
16 believe you had testified you had said, to your
17 knowledge, Mr. Phillips did nothing in exchange for
18 your decision not to prosecute; is that true?

19 THE WITNESS: Yes.

20 THE COURT: And then I assume
21 that you utilized -- there are certain disciplinary
22 rules regarding roles of prosecutor and decisions to
23 prosecute; is that correct?

24 THE WITNESS: Yes.

25 THE COURT: You've reviewed

1
2 them. There's certain ABA standards that I assume
3 you're familiar with. You have said once you made the
4 decision not to prosecute, which was your sole
5 discretion to do so, why did you feel compelled to do
6 anything else?

7 I'm just -- you've explained it,
8 but I'm just saying if you could answer it one other
9 time. Why were you compelled to do anything else in
10 this case?

11 THE WITNESS: Well, I have to
12 tell the public what the decision is.

13 THE COURT: Where is that in
14 your Rules of Conduct that you have to tell the public
15 what your decision is?

16 THE WITNESS: In the special
17 rules of a prosecutor, it says that the prosecutor
18 shall not make extrajudicial statements beyond what is
19 necessary to inform the public of what he or she is
20 doing and the outcome of a prosecution or an
21 investigation.

22 So I had to tell the public what
23 we did. And other than that, the only thing I wanted
24 to confirm was Wally Phillips' agreement with my legal
25 analysis that if Cosby could never be prosecuted, he

1
2 therefore could never take the Fifth. And those were
3 the only things I did.

4 THE COURT: Right. But you've
5 testified here today you wanted him to be punished,
6 and they got a lot of money from the civil case. I
7 mean, you've stated that that was clearly -- once you
8 cleared the hurdle of his Fifth Amendment rights, that
9 they'd be free to bring a civil case. And you were
10 convinced at that stage they would be able to
11 capitalize on it, that they would get money and in
12 some form he would be punished.

13 But there's nothing that
14 requires you to do something like that to ensure if
15 you're not going to prosecute that something else will
16 happen to a defendant?

17 THE WITNESS: I took the word in
18 the -- the words in the disciplinary rule that says
19 the prosecutor is a Minister of Justice to mean that I
20 should find a way of achieving justice, and that's
21 what I did.

22 THE COURT: Okay. That was the
23 Court's questions. So I don't know what he -- whether
24 you have some redirect.

25 MR. McMONAGLE: Very brief.

1
2 THE COURT: We're going to
3 recommence, after this witness completes, tomorrow
4 morning, if we just have to do argument or any other
5 witnesses at that time.

6 MR. McMONAGLE: Yes, sir.

7 THE COURT: Because we have now
8 pushed the bounds.

9 MR. McMONAGLE: May I, Your
10 Honor?

11 THE COURT: Yes.

12 REDIRECT EXAMINATION

13 BY MR. McMONAGLE:

14 Q Mr. Castor, I want to follow up on some of the
15 questions that His Honor just asked and maybe a couple
16 questions by the Assistant District Attorney.

17 You just indicated that, as a
18 Minister of Justice in this case, you wanted to see
19 that justice was served; is that fair?

20 A Yes. Mr. McMonagle, those are the actual words
21 in the comment to the rule. And it's capitalized.
22 The prosecutor is a Minister of Justice. And I
23 thought that meant I was supposed to seek justice to
24 the best of my ability.

25 Q And seek justice to the best of your ability in

1
2 this case led you to a conclusion that you should in
3 this case make a decision that Mr. Cosby would never
4 be prosecuted for the allegations involving
5 Ms. Constand; am I right?

6 A You are right.

7 Q And being a Minister of Justice in this case, you
8 also came to the conclusion that you wanted to make it
9 clear to Mr. Phillips as his counsel that that's
10 exactly what you were doing?

11 A Yes.

12 Q And you did? You actually gave your word --
13 strike that. You gave the word of the Commonwealth of
14 Pennsylvania in this case to Mr. Phillips that you
15 would not prosecute his client for the allegations
16 involved in the Constand matter; am I correct?

17 A I was not acting as Bruce Castor. I was acting
18 as the Commonwealth. And on behalf of the
19 Commonwealth, I promised that we would not -- that the
20 Commonwealth, the sovereign, would not prosecute Cosby
21 for the Constand matter in order to forever strip his
22 Fifth Amendment privilege from him in the Constand
23 sexual assault allegation case.

24 Q Ever?

25 A Ever, yes.

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2 Q And you told that to Mr. Phillips; correct?

3 A I told it to him in no uncertain terms, and he
4 understood it explicitly.

5 Q And relied on your word?

6 A It was not my word. It was the word of the
7 Commonwealth of Pennsylvania. And the people of
8 Montgomery County granted me the power to bound the
9 Commonwealth of Pennsylvania.

10 MR. McMONAGLE: Your Honor,
11 thank you.

12 THE COURT: Is that it?

13 MR. McMONAGLE: Yes, sir.

14 THE COURT: Any final recross
15 examination?

16 MR. RYAN: No, Your Honor.

17 THE COURT: All right. Thank
18 you very much. You may step down.

19 THE WITNESS: Thank you, Your
20 Honor. May I be excused?

21 THE COURT: Yes. At this stage
22 I'm releasing him as a witness in this case. And
23 whoever subpoenaed him holding the power of that
24 subpoena, hearing nothing, I will release it and he's
25 free to go.

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2 MR. McMONAGLE: I subpoenaed
3 him, judge, and I have no objection to him being
4 released.

5 (Witness excused.)

6 - - -

7 THE COURT: We will reconvene
8 tomorrow morning at 9:30. The Decorum Order remains
9 in effect. Again, however many witnesses you intend
10 to call, you will call.

11 I do want to make a decision in
12 this case tomorrow, so if there are briefs that are
13 accompanying any of your arguments with some of the
14 testimony that occurred today, I guess you'll work
15 late.

16 And I intend to revisit the
17 issue regarding removal of the prosecutor and hear you
18 on it at best. I hope -- again, I don't believe
19 there's any testimonial evidence necessary there, but
20 I would like to make the decisions in this case one
21 way or the other so we can move forward.

22 All right?

23 MR. McMONAGLE: Yes, sir.

24 THE COURT: Thank you.

25 MR. RYAN: Thank you, Your

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Honor.

(At 5:20 p.m., proceedings were
concluded.)

- - -

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

VIRGINIA M. WOMELSDORF, RPR
Official Court Reporter

- - -

EXHIBIT 14

IN THE COURT OF COMMON PLEAS
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA:

vs.

WILLIAM H. COSBY, JR.

:
: NO. MD-3156-15
:
:

PETITION FOR WRIT OF HABEAS CORPUS/MOTION TO
DISQUALIFY MONTGOMERY COUNTY DISTRICT ATTORNEY'S
OFFICE

Courtroom A
Wednesday, February 3, 2016
Commencing at 9:33 a.m.

Virginia M. Womelsdorf, RPR
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

BEFORE: THE HONORABLE STEVEN T. O'NEILL, JUDGE

COUNSEL APPEARED AS FOLLOWS:

KEVIN R. STEELE, ESQUIRE
District Attorney
M. STEWART RYAN, ESQUIRE
KRISTEN M. GIBBONS-FEDEN, ESQUIRE
Assistant District Attorneys
for the Commonwealth

BRIAN J. MCMONAGLE, ESQUIRE
CHRISTOPHER TAYBACK, ESQUIRE
MONIQUE PRESSLEY, ESQUIRE
JOSEPH SARLES, ESQUIRE
for the Defendant

I N D E X

DEFENDANT'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
JOHN PATRICK SCHMITT		7	15	59	65

COMMONWEALTH'S EVIDENCE

DOLORES TROIANI		135	198
BEBE KIVITZ		233	238

E X H I B I T S

COMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-1	ABC News "New Developments in Cosby Fondling Investigation"		254
C-2	Pottstown Mercury article "Cosby meets with authorities over sex assault allegations"		254
C-3	Bloomberg.com article dated November 26th, 2014 "Why Did Bruce Castor Pass on a Chance to Lock Up Bill Cosby?"		254
C-4	Southeast Missourian article dated January 27, 2005 "Prosecutor calls case against Bill Cosby weak"		254
C-5	Daily Mail article published November 18, 2014, "I wanted to arrest Bill Cosby"		254
C-6	Washington Post article dated November 19, 2014 "Prosecutor who declined to charge Bill Cosby in 2005: 'I didn't say that he didn't commit the crime'"		254

E X H I B I T S

COMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-7	CNN video		254
C-8	WNPV audio		254
C-9	Philly.com article dated September 14, 2015 "Time hasn't run out on possible charges against Cosby in Pa."		254
C-10	People.com article dated 10-22-15 "Pennsylvania District Attorney Candidates Battle it Out Over the 2005 Bill Cosby Sexual Assault Allegations"		254
C-11	The Intelligencer article dated September 24, 2015 "Montgomery DA candidate Castor urges delay n Cosby case until after elections"		254
C-12	Philly.com article dated 1-31-16 "Castor could be key witness at Cosby hearing"		254
C-13	Cheltenham Township Police Department Investigation Interview Report of William H. Cosby	19	
C-14	Packet titled Responsive, Non-Privileged Documents Withheld from Production Pending Agreement on Confidentiality	28	
C-15	Philadelphia Daily News article dated 2-2-06	42	257
C-16	Settlement Agreement	47	

E X H I B I T S

COMMONWEALTH'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
C-17	Office of the District Attorney Press Release dated January 24, 2005	64	259
C-18	Daily News dated February 18, 2005	142	
C-19	Letter dated July 10, 2015 to Dolores Troiani from Risa Vetri Ferman	185	188
C-20	Letter dated September 22, 2015 to Dolores Troiani and Patrick O'Connor from Risa Vetri Ferman	185	188
C-21	Letter dated September 23, 2015 to Risa Vetri Ferman from Dolores M. Troiani	187	188
C-22	Letter dated September 24, 2015 to Risa Vetri Ferman from Patrick J. O'Connor	187	188

- - -

DEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-1	Castor's biography from 2016 campaign website		77
D-2	Castor's biography from law firm website		77
D-3	Canadian Incident Report		
D-4	Press Release dated 2-17-05		76
D-5	E-mail dated September 23, 2015 to Risa Ferman from Bruce Castor		77

E X H I B I T S

DEFENDANT'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
D-6	Letter dated September 25, 2015 to Bruce Castor from Risa Vetri Ferman		77
D-7	E-mail dated September 25, 2015 to Risa Ferman from Bruce Castor		77
D-8	E-mail dated September 25, 2015 to Risa Ferman from Bruce Castor		77
	- - -		
Stipulation-1	Stipulation	75	259
	- - -		
			<u>Page</u>
	RULING OF COURT		306
	RULING OF COURT		320
	- - -		

(The following proceedings were commenced with the Court, Mr. Steele, Mr. Ryan, Ms. Gibbons-Feden, Mr. McMonagle, Mr. Tayback, Ms. Pressley, Mr. Sarles, and the defendant being present:)

- - -

THE COURT: All right. We had a brief prehearing conference again for the sole purpose of trying to understand how we will proceed this morning regarding witnesses, any motions, arguments thereon, but we don't have any firm plan on how that's going to work out. So we will take it one step at a time here.

We are still in the defendant's case since it is the defendant's motion on habeas corpus that the Court is hearing evidence on. So at this stage you may call your next witness.

MR. TAYBACK: Thank you, Your Honor. The defense calls John P. Schmitt.

- - -

JOHN PATRICK SCHMITT, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TAYBACK:

Q Mr. Schmitt, you go by the first name Jack?

A I do.

Q What do you do for a living?

A I'm a lawyer.

Q Where are you a lawyer? Where do you practice?

A Patterson, Belknap, Webb & Tyler in New York

City.

Q How long have you been at the Patterson Belknap firm?

A Since 1983.

Q What are the positions that you've held while you've been at Patterson Belknap?

A I was an associate from 1983 through 1988, a partner from 1989 through December 2015, became of counsel January 1 of this year. At various times I also held the position of chair of the Corporate Department, chair of our commercial group and vice chair for them.

Q Do you have a specialty within your own practice?

A I'm a corporate lawyer.

Q Have you represented Bill Cosby in the past?

A Since 1983.

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Q In what capacity or capacities have you represented Mr. Cosby?

A When I first came to the firm as a junior associate, I was assigned discreet matters for him. Over time I became more involved in his legal affairs. And starting in the early 1990's I became his general counsel.

Q Describe for me what the role of general counsel is.

A Any legal matters that affect Mr. Cosby would come to me. I would either perform the legal services or I would coordinate the legal services of others.

Q At some point did you become aware -- in approximately 2005 did you become aware of a criminal investigation of Mr. Cosby in Montgomery County?

A I did, in January of 2005.

Q And that was an investigation regarding Andrea Constand?

A That's correct.

Q When you became aware of that criminal investigation, what did you do on behalf of Mr. Cosby?

A I retained criminal counsel. I spoke to the chair of our firm who is also our senior litigator and had been an Assistant U.S. Attorney to ask for

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2 recommendations. He reached out to a number of his
3 former colleagues, and every single one recommended
4 Walter Phillips who was a preeminent criminal lawyer
5 in the Philadelphia area.

6 Q And does Walter also sometimes go by Wally? Did
7 he?

8 A He did go by Wally, yes.

9 Q And did you meet Mr. Phillips?

10 A I did.

11 Q And did you ultimately retain him?

12 A I did.

13 Q On behalf of Mr. Cosby?

14 A I retained him on behalf of Mr. Cosby.

15 Q What role did you serve for Mr. Cosby in
16 connection with the criminal investigation where
17 Mr. Phillips was Mr. Cosby's criminal defense lawyer?

18 A Well, Mr. Phillips dealt directly with the
19 prosecutor's office. He would report to me and
20 discuss all those matters. I would also discuss those
21 with Mr. Cosby to determine how we would proceed.

22 Q Was the D.A. at the time in Montgomery County
23 Bruce Castor?

24 A It was.

25 Q Did Mr. Cosby -- with your advice, did Mr.

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Cosby -- withdraw that.

Did Mr. Cosby cooperate with the investigation?

A He did.

Q Did he participate in an interview?

A He did. He was interviewed in a conference room at my firm by -- I believe it was by detectives from the Cheltenham Police Department and the District Attorney's Office. Mr. Cosby was there, I was there, Mr. Phillips was there, and the detectives were there.

Q At some point in time was the criminal investigation resolved?

A It was.

Q Approximately when?

A Within a matter of weeks. I think it was mid-February.

Q And how was it resolved?

A The District Attorney determined that there was insufficient evidence to charge Mr. Cosby with a crime.

Q And did -- at the time that decision was made, did you have an understanding as to whether the criminal investigation could be continued, could be re-opened?

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2 A I had an understanding it could not be. I spoke
3 to Mr. Phillips who indicated that, although the
4 District Attorney had determined there wasn't
5 sufficient evidence to charge Mr. Cosby, that he did
6 anticipate that there would be a civil litigation.
7 And he wanted to ensure that Mr. Cosby could be
8 compelled to testify in a civil litigation. And,
9 therefore, his decision was -- it was an irrevocable
10 commitment to us that he was not going to prosecute.

11 Q Is that how you understood the determination of
12 the District Attorney's Office?

13 A Absolutely.

14 (Defendant's Exhibit D-4

15 published.)

16 BY MR. TAYBACK:

17 Q I'm going to show you a document that was marked
18 yesterday as Exhibit D-4. Mr. Schmitt, you have the
19 option of a paper in front of you and the video
20 screen. It's a two-page document.

21 Do you recognize that?

22 A It's a press release released by the Office of
23 the District Attorney on February 17th, 2005.

24 Q And do you remember receiving that -- a copy of
25 that press release at or around the time it was

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issued?

A I do.

Q Now, you said that it was anticipated that a civil suit would be filed. Did you understand that a civil suit would likely be filed by Ms. Constand against Mr. Cosby even before it was filed?

A That was my expectation, yeah.

Q And in connection with that civil suit, once the criminal investigation was, as you said, irrevocably concluded, what did you do to assist Mr. Cosby in defending the civil suit that you anticipated would come?

A We retained civil counsel in Philadelphia. We retained Patrick O'Connor, a partner of Cozen O'Connor to be the lead counsel along with our firm, but he was the lead counsel on the litigation.

Q And was Mr. O'Connor retained after the conclusion of the criminal case?

A He was.

Q After -- at some point after the criminal case was concluded, was, in fact, a civil suit filed?

A It was.

Q Approximately when was that?

A I think it was in March of 2005.

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Q And did you, in fact, participate in the defense of that lawsuit on behalf of Mr. Cosby with Mr. O'Connor?

A I did.

Q Did you rely upon the irrevocable commitment of the District Attorney's Office not to reopen the criminal investigation in defending Mr. Cosby?

MR. STEELE: Objection to leading.

THE COURT: Sure is. Don't lead the witness.

MR. STEELE: And it's irrelevant.

BY MR. TAYBACK:

Q What did you do in defending the civil litigation brought by Miss Constand?

A We participated in the discovery. Mr. Cosby sat for a deposition. We did that knowing that the criminal litigation -- that the criminal matter had been concluded and could not be reopened.

Q And how many days of deposition did Mr. Cosby sit for?

A He sat for four days.

Q Did he invoke the Fifth?

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A No.

Q Did you participate in other aspects of discovery?

A Yes.

Q If you had known that the criminal investigation in Montgomery County could be re-opened, how would it have affected your representation, if at all?

A We certainly wouldn't have let him sit for a deposition.

Q Did that civil case eventually resolve?

A It did.

Q Approximately when?

A About a year after it was initiated.

Q Was it a settlement?

A It was a settlement, yeah.

Q Are the terms confidential?

A They are.

Q Did you ever, after February of 2015 (sic), receive any requests from the Montgomery County District Attorney's Office on behalf of Mr. Cosby?

A 2005?

Q I'm sorry, 2005.

A No.

Q Did you receive any requests for the deposition

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transcripts or any portion of them?

A No.

Q Did you ever receive any inquires about how the matter had been resolved?

A No.

Q Did you receive any inquires regarding how the matter was litigated?

A No.

Q Was that true from the date of that press release until --

A Until fall or winter of last year, of 2015.

Q Do you know whether Mr. Phillips is alive?

A He died last year.

Q Do you know when?

A I think almost exactly a year ago, I believe. I'm not certain.

MR. TAYBACK: No further questions.

THE COURT: Cross-examine.

MR. STEELE: Thank you.

CROSS-EXAMINATION

BY MR. STEELE:

Q Mr. Schmitt, we went through some of your background in this -- in your direct testimony. And,

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judge.

THE COURT: Again, I don't mean to be showing my hand, but if you have those cases that are, you know, more close to here where you don't have a judge involved and it was not to a defendant who was charged and, you know, there was, you know, there was no recording of it, just let me know.

MR. TAYBACK: I will --

THE COURT: Other than that, I'm going to assume --

MR. TAYBACK: I will say that there is no case that we have found that turns on it being a writing, that turns on it being transcribed, that says if only you had had it transcribed, that would be the magic of having a court reporter there or have it in writing otherwise. It's not a statute of frauds kind of case.

THE COURT: Agreed, but, again, your whole argument is premised that this Court believes everything that Mr. Castor said because he's the only one testifying as to a promise. He's the only one. It's not -- Mr. Phillips isn't here. Mr. Cosby wasn't in the room. You weren't in the room. Mr. McMonagle. There's no other witness to the

1
2 promise.

3 So what I'm trying to say is
4 you've kind of -- you know, the rabbit is in the hat.
5 And you want me at this stage to assume that, hey, the
6 promise was made, Judge. Just accept that. And now
7 everything else doesn't really -- and I just wanted to
8 make sure that if there's cases in which there's --
9 like this where one person said they made the promise
10 or a potential defendant claims a prosecutor made the
11 promise, that might help, too, you know. But I just
12 wanted to make sure that by the fact you're arguing it
13 doesn't make the promise enforceable.

14 MR. TAYBACK: And I understand.
15 And I'm certainly not assuming that you have to make
16 that determination. You are the finder of fact on
17 this issue and I intend to persuade you why that is
18 true.

19 THE COURT: I appreciate it.

20 MR. TAYBACK: But my point is
21 that if that is true, their arguments that have been
22 framed now by the Commonwealth that are independent of
23 that credibility determination, they're legal
24 arguments. And those legal arguments should be flatly
25 rejected based on the facts as they have come out.

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2 And if their contention in these
3 legal arguments is even if he said we contend what he
4 said, it's not an enforceable agreement. And I am
5 saying that is simply not true, not legally true.

6 The related point -- and this
7 really now, I think, starts to get to the crux of what
8 you're talking about, whether his testimony,
9 Mr. Castor's testimony forms a binding contract, a
10 binding agreement rather to use a better word, maybe a
11 binding promise or a binding commitment, and the
12 evidence of what that is.

13 Well, if you look at the way in
14 which the District Attorney's Office has, what I would
15 say in this argument on this issue, has grasped at
16 straws to try to disprove what Mr. Castor says
17 occurred.

18 They've taken the press release
19 and now, with probably three different witnesses,
20 they've identified a passage in the final paragraph, a
21 single sentence, that talks about the re-opening of
22 the case. Actually, that's not exactly the words.

23 THE COURT: Reconsider.

24 MR. TAYBACK: Reconsider the
25 decision. Reconsider the decision. But both the

1
2 your relief, be prepared immediately to argue the next
3 motion.

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5 (Recess.)

6 - - -

7 (The following proceedings were
8 reconvened with the Court, Mr. Steele, Mr. Ryan, Ms.
9 Gibbons-Feden, Mr. McMonagle, Mr. Tayback, Ms.
10 Pressley, Mr. Sarles, and the defendant being present:)

11 - - -

12 RULING OF COURT

13 THE COURT: All right. At least
14 we're expected to continue with the Decorum Order. I
15 believe Mr. Kehs has at least instructed you as to the
16 Court's intention. We are expecting there will be a
17 brief five-minute recess following my ruling on this.

18 All right. The Court is being,
19 again, asked to consider the habeas corpus petition
20 filed January 11th of 2016, specifically what is
21 contained, as best I can determine by how it was
22 filed, Paragraph 3(b) where the claim of habeas corpus
23 is the charges against Mr. Cosby must be dismissed
24 because they violate the Commonwealth's express
25 agreement for non-prosecution.

The Court's order is as follows.

Based upon a review of all pleadings and filings, the exhibits admitted at this hearing, all testimony of witnesses with credibility determinations being an inherent part of this Court's ruling, I hereby find that no basis to grant the relief requested in Paragraph 3(b) -- that there is no basis to grant that relief requested and the habeas corpus petition seeking dismissal of the charges based thereon is hereby dismissed and denied.

All right. The Court will take a five-minute recess at this stage. We will commence at this stage with the argument.

- - -

(Recess.)

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(The following proceedings were reconvened with the Court, Mr. Steele, Mr. Ryan, Ms. Gibbons-Feden, Mr. McMonagle, Mr. Tayback, Ms. Pressley, Mr. Sarles, and the defendant being present:)

- - -

THE COURT: Counsel, I am moving now to simply argument on the habeas corpus motion 3(d). It is entitled: Alternatively, the Montgomery

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

VIRGINIA M. WOMELSDORF, RPR
Official Court Reporter

- - -

EXHIBIT 15

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION

2016 DEC -5 PM 3:23

CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

COMMONWEALTH OF PENNSYLVANIA : No. 3932-16
: :
v. : :
: :
WILLIAM H. COSBY, JR. :

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER SUR DEFENDANTS'
MOTION TO SUPPRESS EVIDENCE PURSUANT TO PA. R. CRIM. P. 581 (I)**

I. Findings of Fact

1. The Defendant seeks to suppress the contents of his civil deposition testimony, and any evidence derived therefrom, on the basis that he expressly relied upon former District Attorney Bruce L. Castor, Jr.'s alleged promise not to prosecute him as the basis for not invoking his Fifth Amendment right against self-incrimination at his civil depositions in 2005 and 2006. (Defendant's Motion to Suppress the Contents of His Deposition Testimony and Any Evidence Derived Therefrom On the Basis that the District Attorney's Promise Not to Prosecute Him Induced Him to Waive his Fifth Amendment Right Against Self-Incrimination at 1.)
2. A hearing was held before the undersigned on November 1, 2016. No new evidence was presented at the hearing. Rather, the Notes of Testimony from the February 2 and 3, 2016 hearing on the Defendant's "Petition for Writ of Habeas Corpus and Motion to Disqualify the Montgomery County District Attorney's Office," (Commonwealth's Suppression Exhibit 1 (CS-1))¹ and a series of stipulations (CS-2) were admitted as evidence sufficient to dispose of the instant Motion to Suppress which was filed August 12, 2016. (N.T. 11/1/16 at 7-8). This Court considered no other evidence in making its findings and conclusions.
3. On January 24, 2005, then Montgomery County District Attorney Bruce L. Castor, Jr., Esq. issued a signed press release indicating that an investigation had commenced following the victim's January 13, 2005, report to authorities in Canada that she was allegedly sexually assaulted by the Defendant at his home in Pennsylvania. Ultimately, the case was referred to Cheltenham Township Police Department. (N.T. 2/3/16 at 65; C-17).
4. On January 26, 2005, the Defendant gave a written, question and answer statement to law enforcement. The Defendant was accompanied by counsel, both his criminal defense attorney Walter M. Phillips², Esq., and his longtime

¹ All other exhibits referenced herein are cited by the exhibit number assigned at the February 2 and 3, 2016 hearing.

² Mr. Phillips passed away in early 2015.

- general counsel John P. Schmitt, Esq., when he provided his statement to police. (N.T. 2/3/16 at 19, 52-53).
5. At no time during the statement to police did the Defendant invoke his Fifth Amendment privilege. (Id. at 18).
 6. Mr. Schmitt testified that he interviewed the Defendant prior to both his statement to police and to his civil depositions and did not believe that he was going to incriminate himself. (N.T. 2/3/16 at 22-24).
 7. On February 17, 2005, then District Attorney, Bruce L. Castor, Jr., issued a signed press released stating that he had decided not to prosecute William H. Cosby, Jr. (N.T. 2/2/16 at 71-72, 89); Defendant's Exhibit 4 (D-4)).
 8. Mr. Castor testified that it was his intention to strip the Defendant of his Fifth Amendment right to force him to sit for a deposition in an unfiled civil case and that Mr. Phillips, the Defendant's criminal attorney, agreed with his legal assessment. (N.T. 2/2/16 at 63-68). He also testified that he relayed this intention to then First Assistant District Attorney Risa V. Ferman. (Id. at 67).
 9. The press release cautions that the decision could be reconsidered. (N.T. 2/2/16 at 215; D-4).
 10. There was no agreement not to prosecute and no "quid pro quo." (N.T. 2/2/16 at 99, 227).
 11. The decision not to prosecute was not the result of any agreement with, or request from, the victim's attorneys, Dolores Troiani, Esq. and Bebe Kivitz, Esq. (N.T. 2/3/16 at 175, 238, 247-248).
 12. In fact, Ms. Troiani had no contact with the District Attorney's Office during the investigation. (N.T. 2/3/16 at 139-140). Ms. Kivitz had limited contact with then-First Assistant Risa V. Ferman. (Id. at 236, 247).
 13. Further, Ms. Troiani had no discussions with anyone involved in the investigation regarding a possible civil case against the Defendant. (Id. at 140).
 14. Additionally, Ms. Troiani testified that if the Defendant had invoked the Fifth Amendment at his depositions, it would have benefitted their civil case in the event of a jury trial, because she would have requested an adverse inference jury instruction. (N.T. 2/3/16 at 176).
 15. At no time was the purported promise not to prosecute reduced to writing. (N.T. 2/3/16 at 26, 41). Likewise, there was no Court approval of any promise or agreement not to prosecute.
 16. Neither of the victim's attorneys was aware of the purported promise until 2015. (Id. at 184, 237-238).
 17. In fact, Ms. Troiani only learned of Mr. Castor's decision not to prosecute when a reporter came to her office to obtain a comment on the decision. (Id. at 141-142).
 18. During the 2005 criminal investigation, the Defendant's attorneys were negotiating, in writing, with the National Enquirer for the defendant to give an interview regarding the instant allegations, which he gave following the conclusion of the criminal investigation. (N.T. 2/3/16 at 33-34).
 19. On March 8, 2005, the victim filed a civil lawsuit against the Defendant in the Eastern District of Pennsylvania.
 20. On four dates, September 28-29, 2005 and March 28-29, 2006, the Defendant sat for depositions in the civil matter. (N.T. 2/3/16 at 36).

21. He was accompanied by counsel, including Mr. Schmitt. (N.T. 2/3/16 at 13, 36). Mr. Schmitt testified that Mr. Phillips had informed him of Mr. Castor's promise not to prosecute. (Id., at 11).
22. The Defendant did not invoke the Fifth Amendment during the depositions, however, counsel did advise him not to answer questions pertaining to the victim in the instant case and her attorneys had to file motions to compel his testimony. (N.T. 2/3/16 at 41-42, 181-184, 248-249).
23. The Defendant did not invoke the Fifth Amendment when asked about other alleged victims. (Id., at 58-59).
24. At no time during the civil litigation did any of the attorneys for the Defendant indicate on the record that the Defendant could not be prosecuted. (N.T. 2/3/16 at 177, 184, 247-248).
25. There was no attempt to confirm the purported promise before the depositions, even though Mr. Castor was still the District Attorney; it was never referenced in the stipulations at the outset of the civil depositions. (N.T. 2/3/16 at 71, 178-179, 247-248).
26. In the late summer of 2006, the victim and the Defendant settled the civil case. As part of the settlement agreement defendant's attorneys initially attempted to negotiate a provision whereby the victim would absolve the Defendant of criminal responsibility and not cooperate with law enforcement. Additionally, the defendant's attorney requested that Ms. Troiani agree to destroy her file. (N.T. 2/3/16 at 47-48, 190-193).
27. The settlement agreement contains a provision that Ms. Constand would not initiate a criminal complaint against the Defendant based on the instant allegations. (N.T. 2/3/16 at 48; C-22).
28. On July 6, 2015, in response to a request by the Associated Press, a federal judge unsealed previously sealed portions of the record in the civil case, which included portions of the defendant's 2005 depositions. (Defendant's Motion to Suppress The Contents Of His Deposition Testimony and Any Evidence Derived Therefrom on the Basis that the District Attorney's Promise Not to Prosecute Him Induced Him to Waive His Fifth Amendment Right Against Self-Incrimination at 4).
29. Around this time, the District Attorney's Office reopened the investigation. (C-19, C-20).
30. On September 22, 2015, at 10:30 am, Brian McMonagle, Esq. and Patrick O'Connor, Esq., met with then District Attorney Risa Vetri Ferman and then First Assistant District Attorney Kevin Steele at the Montgomery County District Attorney's Office for a discussion regarding William H. Cosby, Jr., who Mr. McMonagle and Mr. O'Connor represented. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #1).
31. On September 23, 2015, at 1:30 pm, Bruce L. Castor, Jr., Esq. sent an email to then District Attorney Ferman. This email was marked and admitted as Defendant's Exhibit 5 at the February 2016 *Habeas Corpus* hearing held in this matter. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #2).

32. On September 23, 2015, at 1:47 pm, Mr. Castor forwarded the email identified above as Defendant's Exhibit 5 to Mr. McMonagle. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #3).
33. On September 25, 2015, then District Attorney Ferman sent a letter to Mr. Castor by way of hand delivery. This letter was marked and admitted as the Defendant's Exhibit 6 at the February 2016 Habeas Corpus hearing held in this matter. At 3:02 pm that same day, Mr. Castor's secretary forwarded a scanned copy of the letter to him by way of email. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #4).
34. In her letter Ms. Ferman stated, "[t]he first I heard of such a binding agreement was your email sent this past Wednesday." (D-6)
35. On September 25, 2015, at 3:59 pm, Mr. Castor forwarded the letter identified above as Defendant's Exhibit 6 to Mr. McMonagle. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #5).
36. On September 25, 2015, at 3:41 pm, Mr. Castor sent an email to then District Attorney Ferman. This email was marked and admitted as Defendant's Exhibit 7 at the February 2016 Habeas Corpus hearing in this matter. (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #6).
37. On September 25, 2015, at 4:19 pm, Mr. Castor forwarded the email identified above as Defendant's Exhibit 7 to Mr. McMonagle along with the message "Latest." (Defendant's Motion to Suppress the Contents of His Deposition: Stipulations #7).
38. On December 31, 2015, the instant charges were filed.
39. The Defendant principally relies on the testimony and writings of Mr. Castor to support his motion.
40. In that regard, the Court finds that there were numerous inconsistencies in the testimony and writings of Mr. Castor and has previously ruled that credibility determinations were an inherent part of this Court's denial of the Defendant's initial "Petition for Writ of Habeas Corpus." (Court Order 2/4/16).
41. There were multiple inconsistencies between Mr. Castor's communications with the District Attorney's Office in September of 2015 and with his testimony on February 2, 2016.
42. For example, in his September 23, 2015 email, he indicated that the decision not to prosecute was an attempt to force the Defendant to sit for depositions in an unfiled civil case and that the decision was made with the "agreement" of defense counsel and plaintiff's counsel. (D-5). However, in his testimony, he indicated that there was no agreement and no quid pro quo.
43. The correspondence further states, "I signed the press release for precisely this reason, at the request of the Plaintiff's counsel, and with the acquiescence of Cosby's counsel, with full and complete intent to bind the Commonwealth that anything Cosby said in the civil case would not be used against him, thereby forcing him to be deposed and perhaps testify in a civil trial without him having the ability to 'take the 5th.'" (D-5). "[B]ut one thing is fact: the Commonwealth, defense and civil plaintiff's lawyers were all in agreement that the attached decision [February 17, 2005 press release] from me stripped Cosby of his Fifth Amendment privilege, forcing him to be deposed." (N.T. 2/3/16 at 195; D-5).

44. This Court credits the testimony of Ms. Kivitz and Ms. Troiani, whose relevant testimony regarding such agreement is outlined in paragraphs 11-17 above.
45. Mr. Castor's testimony about who was in agreement with his decision, as well as what he purportedly promised, was equivocal. (N.T. 2/2/16 at 185-195).
46. In his final email to Ms. Ferman on the subject Mr. Castor states, "I never said we would not prosecute Cosby." (D-8)
47. Additionally, there were multiple inconsistencies between Mr. Castor's accounts to the press and his testimony on February 2, 2016. (E.g., N.T. 2/2/16 at 218-220, C-12).
48. There is no basis in the record to support the contention that there was ever an agreement or a promise not to prosecute the Defendant.
49. There is no basis in the record to support justifiable reliance on the part of the Defendant.

II. Conclusions of law

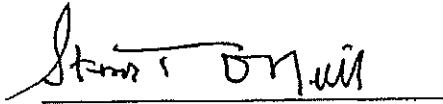
1. Instantly, this Court concludes that there was neither an agreement nor a promise not to prosecute, only an exercise of prosecutorial discretion, memorialized by the February 17, 2005 press release.
2. In the absence of an enforceable agreement, the Defendant relies on a theory of promissory estoppel and the principles of due process and fundamental fairness to support his motion to suppress.
3. Where there is no enforceable agreement between parties because the agreement lacked consideration, the agreement may still be enforceable on a theory of promissory estoppel to avoid injustice. Crouse v. Cyclops Indus., 745 A.2d 606 (Pa. 2000).
4. The party who asserts promissory estoppel must show (1) the promisor made a promise that he should have reasonably expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise. Id. (citing Restatement (Second) of Contracts § 90). Satisfaction of the third requirement may depend, *inter alia*, on the reasonableness of the promisee's reliance and the formality with which the promise was made. Thatcher's Drug Store of W. Goshen, Inc. v. Consol. Supermarkets, Inc., 636 A.2d 156, 160 (Pa. 1994) (citing Restatement (Second) of Contracts § 90, comment b).
5. Because there was no promise, there can be no reliance on the part of the Defendant and principles of fundamental fairness and due process have not been violated.
6. This Court finds that there is no Constitutional barrier to the use of the Defendant's civil deposition testimony.

Based on the foregoing, the Court issues the following:

ORDER

And now, this 5th day of December, 2016, upon consideration of the "Defendant's Motion to Suppress The Contents Of His Deposition Testimony and Any Evidence Derived Therefrom on the Basis that the District Attorney's Promise Not to Prosecute Him Induced Him to Waive His Fifth Amendment Right Against Self-Incrimination," filed August 12, 2016, the Commonwealth's Response thereto, filed September 2, 2016, and after hearing before the undersigned on November 1, 2016, based upon the arguments of counsel and the evidence adduced, the Defendant's Motion to Suppress is hereby **DENIED** in its entirety.

BY THE COURT:


STEVEN T. O'NEILL, J.

Copy of the above Order
mailed on 12/5/16 to the following:
Kevin R. Steele, Esq. (District Attorney's Office)
M. Stewart Ryan, Esq.
Kristen Gibbons Feden, Esq.
Brian J. McMonagle, Esq.
Angela C. Agrusa, Esq.
Court Administration



Secretary

EXHIBIT 16

2016 FEB 4 PM 5:00

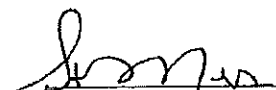
IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : No. MD-3156-15
v. :
WILLIAM H. COSBY, JR. :

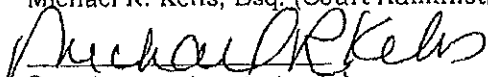
ORDER

AND NOW, this 4 day of February, 2016, it is hereby **ORDERED** as follows:
based upon review of all the pleadings and filings, the exhibits admitted at this
hearing, and all testimony of witnesses, with a credibility determination being an
inherent part of this Court's ruling, the Court finds that there is no basis to grant the
relief requested in paragraph 3b of the Defendant's Petition for a Writ Habeas Corpus
and, therefore, the Habeas Corpus Petition seeking dismissal of the charges is hereby
DENIED.

BY THE COURT:


STEVEN T. O'NEILL J.

Copies of this Order
mailed on 2/4/16
to the following:
Brian J. McMonagle, Esq.
Kevin R. Steele, Esq.
Honorable Elizabeth A. McHugh
Honorable William J. Furber, Jr., President Judge
Michael R. Kehs, Esq. (Court Administrator)


Secretary *ct Admin.*

2016 FEB -4 PM 5:00
MONTGOMERY COUNTY PA

EXHIBIT 17

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

No. 3932-16

v.

WILLIAM H. COSBY, JR.

ORDER

2017 FEB 24 AM 9:03

MONTGOMERY COUNTY
PENNSYLVANIA

AND NOW, this 24th day of February 2017, upon consideration of the Commonwealth's "Motion to Introduce Evidence of Prior Bad Acts of the Defendant," the Defendant's response thereto, argument of Counsel on December 13 and 14, 2016, as well as all Exhibits and statements submitted by Counsel on those dates, the post hearing briefs submitted by Counsel, and this Court's review of Pa.R.E. 404 (b), reported appellate opinions, scholarly articles and analysis of Pa.R.E. 404(b), and following a sedulous analysis of the proposed evidence under both the "common plan, scheme and design" and "absence of mistake" exceptions, and following a careful balancing of the probative value of the other acts evidence and the prejudice to the Defendant, it is hereby **ORDERED** and **DECREED** that the Commonwealth's Motion is **GRANTED** as to Prior Alleged Victim Six and **DENIED** as to Prior Alleged Victims One through Five and Seven through Thirteen.

BY THE COURT:



STEVEN T. O'NEILL J.

Copies of this Order mailed on 24th to the following:
Brian J. McMonagle, Esq.
Angela Agrusa, Esq.
Kevin R. Steele, Esq.
M. Stewart Ryan, Esq.
Kristen Gibbons Feden, Esq.

Mark Parisi for Andrey Bartkowski
Secretary

EXHIBIT 18

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA : No. 3932-16
: :
v. : :
: :
WILLIAM H. COSBY, JR. :

2018 MAR 15 PM 2:51

CLERK OF COURT
MONTGOMERY COUNTY

ORDER

AND NOW, this 15th day of March, 2018, upon consideration of the Commonwealth's "Motion to Introduce Evidence of 19 Prior Bad Acts of the Defendant," the Defendant's response thereto, the Commonwealth's offers of proof, argument of Counsel on March 5 and 6, 2018, the post hearing briefs submitted by Counsel, and this Court's comprehensive review of Pa. R. E. 404 (b), reported appellate authority, an analysis of the proposed evidence under the "common plan, scheme and design" and "absence of mistake" exceptions, and a balancing of the probative value of the other acts evidence versus the risk of unfair prejudice to the Defendant, it is hereby **ORDERED** and **DECREED** that the Commonwealth's Motion is **GRANTED** in part and **DENIED**, in part, subject to further examination and evidentiary rulings in the context of trial.

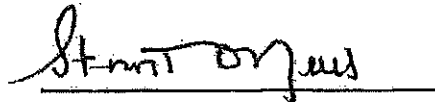
The Commonwealth shall be permitted to present evidence, pursuant to Pa. R. E. 404 (b), regarding **five** prior bad acts of its choosing from CPBA 2-12 through CPBA 2-19. See, Commonwealth v. Hicks, 91 A.3d 47, 55 (Pa. 2014) ("Hicks I") (stating that "[trial court] would have the authority to dictate how many cumulative witnesses may testify, but it cannot dictate which of those

witnesses the Commonwealth may call to prove its case"); Commonwealth v. Hicks, 156 A.3d 1114 (Pa. 2017) (plurality) ("Hicks II"); Commonwealth v. Gordon, 652 A.2d 317, 324 (Pa. Super. 1994); Commonwealth v. Frank, 577 A.2d 609 (Pa. Super. 1990) (enumerating balancing test factors); Commonwealth v. Smith, 825 A.2d 1086 (Pa. Super. 1993); Commonwealth v. Donahue, 549 A.2d 121 (Pa. 1988).

The balance of the Commonwealth's Motion is **DENIED**.

The Commonwealth shall identify to the undersigned and to Defense counsel which witnesses it intends to call by March 19, 2018.

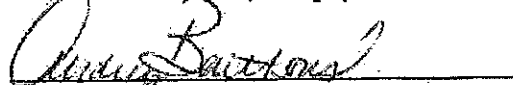
BY THE COURT:



STEVEN T. O'NEILL J.

Copies of this Order mailed on 3/15/18 to the following:

Lane Vines, Esq.
Thomas A. Mesereau, Jr., Esq.
Kathleen Bliss, Esq.
Jason Hicks, Esq.
Becky S. James, Esq.
Kevin R. Steele, Esq.
M. Stewart Ryan, Esq.
Kristen Gibbons Feden, Esq.
Michael R. Kehs, Esq. (Court Administrator)



Secretary

PROOF OF SERVICE

I hereby certify that this 24th day of April, 2019, I have served the attached Petition for Review, including its Exhibits, on the persons and on the dates and manners set forth below, which satisfies the requirements of Pa.R.A.P. 121.

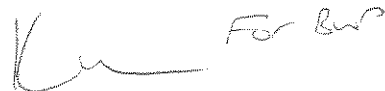
VIA PACFILE AND UNITED STATES POSTAL SERVICE

Kevin Steele, District Attorney
Montgomery County District Attorney's Office
Montgomery County Courthouse
4th Floor
P.O. Box 311
Norristown, PA 19404-0311

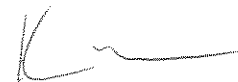
Robert Falin, Assistant District Attorney
Montgomery County District Attorney's Office
Montgomery County Courthouse
4th Floor
P.O. Box 311
Norristown, PA 19404-0311

VIA UNITED STATES POSTAL SERVICE

Judge Steven T. O'Neill
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311

 For BWP

Brian W. Perry, Esquire



Kristen L. Weisenberger, Esquire