

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 VS. : NO. 39-MAP-2020  
 :  
 WILLIAM HENRY COSBY, JR. :

**APPELLANT’S APPLICATION FOR RELIEF SEEKING PERMISSION  
TO EXCEED PAGE LIMIT ON PRIMARY BRIEF**

The Appellant, William Henry Cosby, Jr. (the “Appellant”), by and through his attorneys, Perry Shore Weisenberger & Zemlock and the Bonjean Law Group, PLLC, and pursuant to Pa.R.A.P. 123 and 2135(a)(1), files this Application for Relief Seeking Permission to Exceed Page Limit on Primary Brief and, in support hereof, states as follows:

1. On June 23, 2020, this Honorable Court granted allowance of appeal in this case on two issues of substantial importance. The first pertains to the lower court’s application of Pa.R.E. 404(b)(2) and its decision to allow evidence of decades-old allegations of uncharged, sexual misconduct purportedly committed by Appellant to be presented to the jury through the testimony of five women, and a *de facto* sixth from the 1970’s.

2. Appellant was not charged with and on trial for the conduct alleged by these other women but, instead was on trial for contact between he and the

complainant (the “Complainant”) which was alleged to have occurred in January 2004; according to Complainant, she did not consent to the sexual contact at issue.

3. The first issue also involves the decision of the lower court to admit excerpts of deposition testimony provided by Appellant in a civil case in which he admitted, among other things, that in the 1970’s he provided Quaaludes to women.

4. The second question implicates issues of first impression involving the scope of a prosecutor’s authority to agree to never prosecute an accused for alleged misconduct; the ability of a prosecutor to bind his successor to a commitment not to prosecute; and the applicability of principles of promissory estoppel to promises made by an incumbent prosecutor which were relied on by the accused, to his detriment, and resulting in the loss of a fundamental constitutional right, i.e., the Fifth Amendment right against self-incrimination.

5. Additionally, this case has a complex procedural history, along with a protracted factual background.

6. In order to properly brief the issues, significant factual and legal analysis is required. For example, the analysis of the lower court’s decision concerning the admissibility of the prior bad acts testimony under Pa.R.E. 404(b)(2) requires an examination of the specific facts and circumstances surrounding the allegations lodged by each of the five other women, and the

allegations lodged by Complainant to assess whether there were any striking similarities or a close factual nexus to the conduct for which Appellant was on trial, and to assess whether this testimony was probative of any material issue in the case.

7. Additionally, a thorough analysis of the law concerning the proper application of the common plan exception and absence of mistake exception of Rule 404(b)(2) is required, as the common plan exception has been misapplied over the years, or has been inappropriately expanded such that propensity evidence has been allowed to be introduced under the veil of “common plan.” Similarly, a thorough analysis of the absence of mistake exception is required, as the Superior Court in this case effectively established a new rule which allows evidence of a “pattern” of uncharged and unproven allegations of sexual misconduct to be admitted, not to establish that the defendant committed the *actus reus* of the crime, but to establish the *mens rea* of the accused; such is a misapplication of the absence of mistake exception to Pa.R.E. 404(b)(2) and allows propensity evidence to be admitted under this guise.

8. With respect to the second question, it implicates issues of first impression under Pennsylvania law. Because of the absence of controlling Pennsylvania authority on this question, counsel have attempted to thoroughly

review and address cases from other jurisdictions.

9. Additionally, the second question also requires a close review and discussion of the Record concerning the intent of the parties with respect to the non-prosecution commitment at issue and its scope.

10. Upon completion of research on these issues, and after nearly completing the brief, including the substantial editing of it, counsel have concluded that these issues cannot be properly presented to the Court in 14,000 words as required by Pa.R.A.P. 2135(a)(1).

11. In order to properly address the issues raised on appeal so that this Court has the benefit of a fully developed brief, with proper references to the Record and a proper analysis of the law, Appellant believes, and therefore avers, that an enlargement of pagination is required. Specifically, Appellants seeks to file a primary brief of not more than 21,000 words.

WHEREFORE, Appellant William Henry Cosby, Jr., respectfully requests that this Honorable Court grant Appellant permission to exceed the word limit set

forth in Pa.R.A.P 2135 and submit a primary brief of not more than 21,000 words.

Respectfully submitted,

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Date: August 4, 2020

**VERIFICATION**

I verify that the statements made in this Application for Relief Seeking Permission to Exceed Page Limit on Primary Brief are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

*s/Brian W. Perry* \_\_\_\_\_  
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*s/Barbara A. Zemlock* \_\_\_\_\_  
Barbara A. Zemlock, Esquire

*s/Jennifer Bonjean* \_\_\_\_\_  
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**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.

*s/Brian W. Perry* \_\_\_\_\_  
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*s/Jennifer Bonjean* \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

AND NOW, this 4th day of August 2020, I hereby certify that I have served the foregoing Appellant's Application for Relief Seeking Permission to Exceed Page Limit on Primary Brief on the following via PACFile and the United States Postal Service:

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