

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

OMAR A. RAHMAN

Appellant

No. 2932 EDA 2022

Appeal from the PCRA Order Entered October 24, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0012018-2013

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

OMAR A. RAHMAN

Appellant

No. 2935 EDA 2022

Appeal from the PCRA Order Entered October 24, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0012044-2013

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

OMAR A. RAHMAN

Appellant

No. 2937 EDA 2022

Appeal from the PCRA Order Entered October 24, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0013648-2013

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.	:	
	:	
	:	
OMAR A. RAHMAN	:	
	:	
Appellant	:	No. 2938 EDA 2022
Appeal from the PCRA Order Entered October 24, 2022		
In the Court of Common Pleas of Philadelphia County Criminal Division at		
No(s): CP-51-CR-0010006-2013		
COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
OMAR A. RAHMAN	:	
	:	
Appellant	:	No. 2939 EDA 2022
Appeal from the PCRA Order Entered October 24, 2022		
In the Court of Common Pleas of Philadelphia County Criminal Division at		
No(s): CP-51-CR-0009988-2013		

BEFORE: BENDER, P.J.E., LAZARUS, J., and SULLIVAN, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED NOVEMBER 22, 2023**

Appellant, Omar A. Rahman, appeals *pro se* from the post-conviction court's order, entered in his five separate cases that were consolidated for trial, denying his petition filed under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we affirm.

This Court summarized the facts of Appellant's underlying cases in our disposition of his appeal from his judgment of sentence, as follows:

The instant appeals concern a series of gunpoint robberies [Appellant] committed during the summer of 2013, beginning with the robbery of Krystal Cruz. On June 26, 2013, [Appellant]

approached Cruz on the 3100 block of Emerald Street, pointed a revolver at her stomach, and demanded money. Cruz gave [Appellant] \$10. [Appellant] grabbed Cruz's phone and fled. Cruz went to her house and used her home phone to call 911. When the police arrived, she described her assailant as a tall, light-skinned man with dreadlocks.

On June 27, 2013, [Appellant] approached Jarrett Natson on the 5800 block of Washington Avenue, pointed a silver revolver in Natson's face, ordered him to the ground, and took his belongings. Natson described his assailant as a man in a hooded sweatshirt, with an exposed face and dreadlocks.

On July 19, 2013, [Appellant] approached Aaron Slaughter and Raheem Baynes on the 1200 block of South 58th Street, pointed a silver revolver at them, and ordered them to the ground. [Appellant] took their phones, wallets, and a duffle bag. Soon afterwards, Slaughter used a second cell phone to call the police. Contemporaneously, Slaughter's friend "Michael" drove by and attempted to locate the perpetrator. Michael saw someone drive away, and relayed the car's New Jersey license plate number to Slaughter. Slaughter, in turn, passed this information along to the police, and described the perpetrator as a light-skinned man with dreadlocks.

On July 20, 2013, [Appellant] approached Everal Laing on the 6000 block of Jefferson Street, held a silver revolver to his head, ordered him to his knees, and demanded money. [Appellant] took Laing's phone, money, and a bag containing some paperwork and clothing. When [Appellant] demanded money, Liang [*sic*] asked for his bag back so he could locate his money for [Appellant]. Liang [*sic*] instead took his wallet out of the bag and ran to a nearby police station, where he reported the robbery and described the perpetrator as a man with a light complexion, wearing his hair in braids or dreadlocks.

On July 21, 2013, [Appellant] approached Kyle Stanley on the 1500 block of West Allegheny Avenue, pointed a revolver at his temple, ordered him to the ground, and took his watch, money, and phone. Contemporaneously, Officers Donyul Williams and Ronald Gilbert drove by in a Ford Crown Victoria. Recognizing the Crown Victoria as an unmarked police vehicle, Stanley began physically struggling with [Appellant] and yelling for help, stating [Appellant] was armed. When Officer Williams approached the fracas, [Appellant] disengaged from Stanley and fled. Stanley told

Officer Williams that [Appellant] attempted to rob him at gunpoint. [Appellant] fled on foot, ignoring Officer Williams' demands to stop, only pausing to duck down by a parked minivan. The police caught up with [Appellant] and detained him. The officers proceeded to search for the gun described by Stanley and located a silver revolver in the wheel well of the minivan where Officer Williams observed [Appellant] stop and duck down. The police, however, did not recover the items [Appellant] took from Stanley.

After apprehending [Appellant], the officers returned to their vehicle. The officers then noticed a woman sitting in a parked car that was stuck behind the officer[s'] hastily parked police cruiser. Officer Williams began questioning her, thinking she might have been a witness. The woman identified [Appellant] as her boyfriend. Officer Williams then noticed an iPad and several phones in the front of the car. [Appellant] was arrested and officers secured the vehicle, a H[y]undai Elantra ("the Elantra") with New Jersey plates. The police applied for and received a search warrant for the Elantra, pursuant to which they seized eleven phones, an iPad Mini, and various documents, including Liang's [sic] bank statement and [Appellant's] driver's license.

These items helped lead police to the above-named victims. One cell phone led detectives to Cruz, who identified [Appellant] in an eight-person photo array as the individual who robbed her at gunpoint. Detectives questioned Laing after discovering his bank statement during the search of the Elantra. Liang [sic] identified the bank statement as his. He was then shown an eight-person photo array and identified [Appellant] as the man who robbed him. Another cell phone led police to Natson, who was unable to make a positive identification of the perpetrator from an eight-person photo array. He was, however, able to identify his phone as the one taken from him during the June 27, 2013 robbery. Natson subsequently attended an in-person lineup and identified [Appellant] as the man who robbed him. The police located Slaughter after searching for reports of gunpoint robberies committed by an individual with dreadlocks using a silver revolver during late June and July of 2013. Slaughter subsequently identified [Appellant] as his assailant from a photo array provided by detectives.

Commonwealth v. Rahman, No. 3556 EDA 2017, unpublished memorandum at *3-7 (Pa. Super. filed July 1, 2019) (lead docket number only used).

Appellant represented himself at his jury trial, with backup counsel's assistance. On December 14, 2016, the jury convicted him of six counts of robbery, 18 Pa.C.S. § 3701(a)(1)(ii), and five counts of possessing an instrument of crime, 18 Pa.C.S. § 907. On May 17, 2017, the trial court sentenced him to an aggregate term of 25 to 53 years' incarceration. Appellant timely appealed, and on July 1, 2019, this Court affirmed his judgment of sentence in four of his five cases (Nos. CP-51-CR-0012044-2013, CP-51-CR-0013648-2013, CP-51-CR-0010006-2013, and CP-51-CR-0009988-2013). **See id.** Appellant's judgment of sentence in his fifth case (No. CP-51-CR-0012018-2013) was dismissed on November 17, 2019, due to his failure to file a brief. **See Commonwealth v. Rahman**, No. 2550 EDA 2018, unpublished judgment order (Pa. Super. filed Nov. 27, 2019). Our Supreme Court denied Appellant's subsequent petitions for allowance of appeal on March 24, 2020, and September 15, 2020. **See, e.g., Commonwealth v. Rahman**, No. 512 EAL 2019, No. 513 EAL 2019, No. 514 EAL 2019, No. 515 EAL 2019 (Pa. filed Mar. 24, 2020) (denying allowance of appeal in Nos. CP-51-CR-0012044-2013, CP-51-CR-0013648-2013, CP-51-CR-0010006-2013, and CP-51-CR-0009988-2013); **Commonwealth v. Rahman**, 120 EAL 2020 (Pa. filed Sept. 15, 2020) (denying allowance of appeal in No. CP-51-CR-0012018-2013).

On March 3, 2021, Appellant filed a timely, *pro se* PCRA petition in each of his five cases. After a hearing pursuant to ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998), the PCRA court permitted Appellant to represent himself. Appellant filed an amended PCRA petition on September 14, 2021. The Commonwealth filed a motion to dismiss his petition on November 19, 2021. On March 22, 2022, and June 3, 2022, the court held a bifurcated PCRA hearing. On October 24, 2022, the court issued, in each case, an order and opinion (titled “Findings of Fact and Conclusions of Law *Sur* Amended PCRA Petition”) denying Appellant’s petition.

On October 31, 2022, Appellant filed timely, *pro se* notices of appeal in each case.¹ The court did not direct him to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and in lieu of a Rule 1925(a) opinion, the court notified us that it is relying on the rationale set forth in its October 24, 2022 opinion accompanying its order denying Appellant’s petition.

Herein, Appellant states six issues for our review:

¹ Appellant designated October 21, 2022, as the date of the order appealed from on all five notices of appeal. The trial court dockets indicate the orders dismissing Appellant’s PCRA petitions were filed on October 24, 2022. Accordingly, on January 20, 2023, and January 23, 2023, this Court entered an order, at each appeal docket, for Appellant to show cause why the appeal should not be quashed as having been taken from a purported order which is not entered upon the trial court docket. **See** Pa.R.A.P. 301(a). On January 30, 2022, Appellant responded to the orders to show cause, indicating that he is appealing from the PCRA court’s October 24, 2022 order denying his petition. Thus, our rule to show cause was discharged and the appeal dockets were corrected to reflect that the appeals lie from the October 24, 2022 orders. The cases were also *sua sponte* consolidated on February 27, 2023.

- 1) Whether the PCRA [c]ourt erred by determining that Appellant did not demonstrate that he was denied a fair trial and prejudiced by the denial of the motion *in limine* to exclude irrelevant and prejudicial evidence?
- 2) Whether the PCRA [c]ourt erred by determining that Appellant did not demonstrate that he was[] denied the right to face his accuser, denied the right to a fair trial and, prejudiced by the admission of Raheem Baynes' out-of-court statement in to [*sic*] evidence?
- 3) Whether the PCRA [c]ourt erred by determining that Appellant did not demonstrate that he was[] denied compulsory process, denied the right to a fair trial and, prejudiced by the exclusion of the testimony of Joseph Kmetz, Maurine Treston, Kevin Boston, Aerni Dunlap, Officer Ruggia, Detective Daniel Murawski, and Detective Joseph Murano?
- 4) Whether the PCRA [c]ourt erred by determining that Appellant did not prove a **Brady**^[2] violation by a preponderance of the evidence?
- 5) Whether the PCRA [c]ourt erred by determining that Appellant did not demonstrate that the cumulative effect of the above errors violated his right to due process?
- 6) Whether the PCRA [c]ourt erred and abused its discretion by disposing of Appellant's motion for discovery while the Commonwealth did not produce the December[] 2016 trial subpoena for Raheem Baynes?

Appellant's Brief at 2.

To begin, we note that:

"In reviewing the propriety of an order granting or denying PCRA relief, an appellate court is limited to ascertaining whether the record supports the determination of the PCRA court and whether the ruling is free of legal error." **Commonwealth v. Johnson**, ... 966 A.2d 523, 532 ([Pa.] 2009). We pay great deference to the findings of the PCRA court, "but its legal determinations are subject to our plenary review." **Id.**

² **Brady v. Maryland**, 373 US 83 (1963).

Commonwealth v. Matias, 63 A.3d 807, 810 (Pa. Super. 2013).

Here, in reviewing Appellant's first five issues, we have considered the briefs of the parties, the certified record, and the applicable law. We have also assessed the October 24, 2022 opinion of the Honorable Giovanni O. Campbell of the Court of Common Pleas of Philadelphia County. We conclude that Judge Campbell's well-reasoned opinion completely and correctly explains why the first five issues Appellant raises on appeal do not warrant relief. Accordingly, we adopt Judge Campbell's opinion as our own regarding Appellant's first through fifth issues herein.

In Appellant's sixth issue, he contends that the PCRA court erred in disposing of his motion for discovery seeking a copy of a 2016 subpoena for Raheem Baynes. By way of background, at the March 25, 2022 PCRA hearing, Courtney Malloy, Esq., testified that she was the Assistant District Attorney who prosecuted Appellant's case, and she had issued a subpoena for Baynes, but that she was "unsuccessful in locating Mr. Baynes to serve him with [that] subpoena...." N.T., 3/25/22, at 91-92, 94, 113. On March 31, 2022, Appellant filed a "Petition for PCRA Discovery" requesting that the Commonwealth turn over a copy of that subpoena. The PCRA court granted Appellant's motion, and at the June 3, 2022 PCRA hearing, the Commonwealth produced a screenshot from its "computer service, which indicate[d] that on April 26, 2016, a subpoena was sent to Mr. Raheem Baynes for December 6, 2016, which would have been the date of the trial in this case." N.T., 6/3/22, at 6. The Commonwealth explained that it only could provide a screenshot from its

computer system because it was “impossible ... to access a digital copy of a subpoena” that was issued “six years in the past....” ***Id.*** In response, Appellant argued that the Commonwealth should be required to present someone to authenticate the screenshot, especially as it showed both a date of April 26, 2016, and a date of June 2, 2022, suggesting that the Commonwealth had created the document on the later date. ***Id.*** at 7-8. He reiterates these arguments on appeal. No relief is due.

In rejecting Appellant’s challenges at the PCRA hearing, the court explained:

[The Court: The Commonwealth] can’t generate a copy of the actual subpoena, but what [the Assistant District Attorney, Joseph Duffy, Esq.,] did do was look in the system, take a screenshot -- and correct me if I’m saying this incorrectly, Mr. Duffy -- and printed out that screenshot. That’s the reason for the printout date at the bottom of 6/2 because that’s the date he printed it out. And that is all you have. It does not require someone to testify as a custodian of records or anything else.

Id. at 9. The court also explained that Appellant “could ... make an argument against the weight of the evidence, the evidence being [Attorney] Malloy’s testimony, [and] argue against her credibility because they don’t have the actual subpoena.” ***Id.*** at 10.

We discern no abuse of discretion in the court’s handling of Appellant’s discovery request. The Pennsylvania Rules of Criminal Procedure state that “no discovery shall be permitted at any stage of the [PCRA] proceedings, except upon leave of court after a showing of exceptional circumstances.” Pa.R.Crim.P. 902(E)(1). Here, the court granted Appellant’s request for the

Commonwealth to produce the 2016 subpoena for Baynes. The court clearly found credible the Commonwealth's explanation that, due to the passage of time, it could only produce a screenshot showing the issuance of that subpoena. The court explained that Appellant could challenge the weight of Attorney Malloy's testimony that a subpoena was issued for Baynes on the basis that the actual subpoena could not be produced. We conclude that the PCRA court's rulings adequately addressed Appellant's discovery request, and did not constitute an abuse of the court's discretion.

Finally, we address a *pro se* "Motion to Remand" filed by Appellant during the pendency of this appeal. In that motion, Appellant claims that "[o]n August 24, 2023, [he] received a Philadelphia Police Department Misconduct Disclosure from the Philadelphia District Attorney's Office wherein Detective Joseph Cremen had been found guilty of 'failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of Supervisors' on June 29, 2021." Motion to Remand, 9/5/23, at ¶ 5. Appellant claims that he "could have used this information to impeach Detective Cremen at the June 3, 2022 evidentiary hearing[,] " at which the detective testified about his attempts to get Baynes to appear for trial and conversations he had with Baynes. ***Id.*** at ¶ 6.

Appellant additionally avers that

[t]he Misconduct Disclosure also contained numerous allegations of serious misconduct committed by Philadelphia Police Officer Ronald Gilbert[,] including false arrest, physical abuse, and verbal abuse on November 4, 1998[,] that was sustained by Commanding Officer Mark A. Jones of the Philadelphia Police

Department's Internal Affairs Division. Officer Gilbert was one of the arresting Officers in Appellant's case pertaining to Complainant Kyle Stanley.

Id. at ¶ 7.

Appellant insists that the Commonwealth had a duty, under **Brady**, to disclose the misconduct of Detective Cremen to him prior to the PCRA hearing, and the misconduct of Officer Gilbert to him prior to his trial. Because it failed to do so, Appellant asks that we remand for the PCRA court to consider this new "**Brady** material...." **Id.**

We have explained that,

[i]n **Brady**, the United States Supreme Court held that "suppression by the prosecution of favorable evidence to an accused upon request violates due process where the evidence is material either to guilt or to punishment...." **Brady**, 373 U.S. at 87.... **Brady's** mandate is not limited to pure exculpatory evidence; impeachment evidence also falls within **Brady's** parameters and therefore must be disclosed by prosecutors. **U.S. v. Bagley**, 473 U.S. 667, 677 ... (1985).

[T]o establish a **Brady** violation, a defendant must demonstrate that: (1) the evidence was suppressed by the Commonwealth, either willfully or inadvertently; (2) the evidence was favorable to the defendant; and (3) the evidence was material, in that its omission resulted in prejudice to the defendant. The burden rests with the defendant to "prove, by reference to the record, that evidence was withheld or suppressed by the prosecution."

To demonstrate prejudice, "the evidence suppressed must have been material to guilt or punishment." **Commonwealth v. Gibson**, 951 A.2d 1110, 1126 ([Pa.] 2008). Evidence is material under **Brady** when there is a reasonable probability that, had the evidence been disclosed, the result of the trial could have been different. **Kyles v. Whitley**, 514 U.S. 419, 433-34 ... (1995).

A reviewing court is not to review the evidence in isolation, but, rather, the omission is to be evaluated in the context of the entire record. When conducting this analysis in the PCRA context, a defendant must establish that the alleged **Brady** violation “so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa.C.S. § 9543(a)(2)(i); **Commonwealth v. Copenhefer**, 719 A.2d 242, 259 ([Pa.] 1998).

Commonwealth v. Haskins, 60 A.3d 538, 546-47 (Pa. Super. 2012) (some internal citations and quotation marks omitted).

Here, Appellant has failed to demonstrate that the evidence of Detective Cremen’s and Officer Gilbert’s misconduct in wholly unrelated cases was material to Appellant’s case or the PCRA proceedings, such that its omission resulted in prejudice to Appellant. We find **Commonwealth v. Brown**, 134 A.3d 1097 (Pa. Super. 2016), instructive, although it addressed an after-discovered-evidence claim rather than a **Brady** violation. There, this Court rejected Brown’s claim that he deserved an after-discovered-evidence hearing based on two newspaper articles discussing the misconduct of Philadelphia Police Detectives Ronald Dove and James Pitts in unrelated cases. **Id.** at 1108. Detectives Dove and Pitts had both been directly involved in Brown’s case, taking statements from Brown and another witness, who later recanted that statement. **Id.** Despite this direct involvement, we concluded that Brown was not entitled to an evidentiary hearing to explore whether the detectives had committed misconduct in his case. **Id.** at 1108-09. We reasoned that, with respect to Detective Dove, Brown had relied only “on [a] newspaper

article reporting on Dove’s possible misconduct” in an unrelated case, and he did “not articulate what evidence he would present at the evidentiary hearing on remand.” ***Id.*** at 1109. Pertaining to Detective Pitts, Brown only specified witnesses that he would call to testify about Pitts’ improper interrogation techniques in other cases. ***Id.*** We concluded that, absent proof that Detective Pitts had committed misconduct in Brown’s case, the evidence of his improper interrogation tactics from other cases could only be used by Brown to attack Pitts’ credibility, which cannot satisfy the after-discovered evidence test. ***Id.*** Therefore, because “an evidentiary hearing is not meant to function as a fishing expedition for any possible evidence that may support some speculative claim,” we held that Brown had not demonstrated that a hearing was warranted. ***Id.***³

Likewise, in this case, Appellant has failed to establish a nexus between his convictions and the misconduct of Detective Cremen or Officer Gilbert in

³ ***See also Commonwealth v. Johnson***, 179 A.3d 1105, 1122-23 (Pa. Super. 2018) (affirming the denial of a PCRA after-discovered evidence claim based on criminal convictions of a police detective who testified at the defendant’s trial and was involved in questioning a witness who identified the defendant, where convictions occurred years after the defendant’s trial and arose out of conduct in an unrelated case); ***Commonwealth v. Griffin***, 137 A.3d 605, 610 (Pa. Super. 2016) (reversing the grant of a new trial based on after-discovered evidence of misconduct of a police officer who testified at the defendant’s trial where alleged misconduct was in unrelated case); ***Commonwealth v. Foreman***, 55 A.3d 532, 534-35, 537 (Pa. Super. 2012) (affirming the denial of a PCRA after-discovered evidence claim based on criminal charges against a police detective who testified at the defendant’s trial, where the charges arose out of conduct in an unrelated case that occurred more than two years after the defendant’s trial).

other, unrelated cases. Appellant never claimed – and does not assert now – that he was mistreated during his arrest by Officer Gilbert. Thus, Appellant has not pleaded any facts that would indicate that the officer’s misconduct in conducting an arrest 15 years before he was involved in Appellant’s arrest would have been favorable or material to Appellant’s case, or that its omission resulted in prejudice to Appellant.

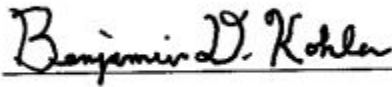
Additionally, Appellant does not elaborate on how he could have used Detective Cremen’s wholly unrelated, irrelevant misconduct to impeach his credibility at the PCRA hearing. Moreover, to warrant a new trial based on after-discovered evidence, the appellant must show that the evidence “(1) could not have been obtained prior to trial by exercising reasonable diligence; (2) is not merely corroborative or cumulative; (3) **will not be used solely to impeach a witness’s credibility**; and (4) would likely result in a different verdict.” *Commonwealth v. Castro*, 93 A.3d 818, 821 (Pa. 2014) (citation omitted; emphasis added). It is logical then, that for Appellant to demonstrate he is entitled to a new PCRA hearing based on the after-discovered evidence of Detective Cremen’s misconduct, he must also demonstrate that that evidence would not be used solely to impeach the detective’s testimony. As that is precisely the purpose for which Appellant states he would use Detective Cremen’s misconduct report, no remand is warranted.

In sum, none of the issues raised in Appellant’s PCRA petition warrant relief, based on the rationale set forth in the PCRA court’s opinion, which we adopt herein. Additionally, the court did not err in handling Appellant’s

discovery motion, and his request that we remand based on the evidence of Detective Cremen's and Officer Gilbert's misconduct in other cases is hereby denied.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/22/2023



GIOVANNI O. CAMPBELL
JUDGE

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS
JUDICIAL CHAMBERS

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December 15, 2022

Benjamin Kohler, Esq.,
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FILED

DEC 15 2022

Appeals/Post Trial
Office of Judicial Records

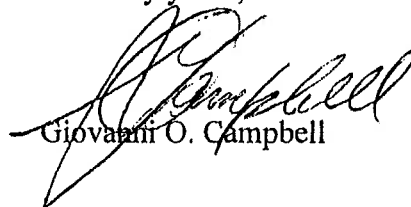
Letter in Lieu of Opinion

Re: *Commonwealth v. Omar A. Rahman*
CP-51-CR-0009988-2013
CP-51-CR-0010006-2013
CP-51-CR-0012018-2013
CP-51-CR-0012044-2013
CP-51-CR-0013648-2013
2932 EDA 2022
2935 EDA 2022
2937 EDA 2022
2938 EDA 2022
2939 EDA 2022

Dear Mr. Kohler:

The above-referenced matters are appeals from the order of this court denying Appellant's PCRA Petition. Pursuant to Pa. R. A. P. 1925(a), please be advised that the reasons for the denial of Appellant's petition may be found in the record in Findings Of Fact And Conclusions Of Law *Sur* Amended PCRA Petition, filed October 24, 2022 (copy attached).

Sincerely yours,


Giovanni O. Campbell

Received

DEC 15 2022

Office of Judicial Records
Appeals/Post Trial

GOC/jw
Enclosure

cc. Omar A. Rahman (Pro Se)
Lawrence J. Goode, Assistant District Attorney

FILED

OCT 24 2022

PCRA Unit
CP Criminal Listings

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

COMMONWEALTH	:	CP-51-CR-0009988-2013
	:	CP-51-CR-0010006-2013
v.	:	CP-51-CR-0012018-2013
	:	CP-51-CR-0012044-2013
OMAR A. RAHMAN	:	CP-51-CR-0013648-2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW
SUR AMENDED PCRA PETITION

PROCEDURAL HISTORY

1. On December 7, 2016, Petitioner Omar Rahman, proceeded to trial before this court, sitting with a jury, on five consolidated cases.
2. Petitioner was convicted and sentenced on charges of robbery and possessing an instrument of a crime on each case.
3. The facts and the procedural history up to the direct appeals are set forth in this court's June 3, 2018, Memorandum Opinion.
4. Petitioner represented himself on his direct appeals, following a *Grazier* hearing held on February 5, 2018.
5. On July 1, 2019, the Superior Court affirmed Petitioner's convictions on four of the cases: CP-51-CR-0009988-2013, CP-51-CR-0010006-2013, CP-51-CR-0012044-2013, CP-51-CR-0013648-2013, under Superior Court dockets 3556 EDA 2017, 3748 EDA 2017, 3588 EDA 2017, and 3589 EDA 2017. *Commonwealth v. Rahman*, No. 3556 EDA 2017, 2019 WL 2745540 (Pa. Super. filed July 1, 2019).
6. The Supreme Court denied allowance of appeal on those four cases on March 24, 2020.
7. Petitioner's appeal of the fifth case, CP-51-CR-0012018-2013, was dismissed by the Superior Court by Judgement Order dated November 27, 2019, under No. 2550 EDA 2018.

8. The Supreme Court denied allowance of appeal on that fifth case on September 15, 2020.

9. Petitioner filed a timely *pro se* petition under the Post-Conviction Relief Act (PCRA) on March 3, 2021.

10. A *Grazier* hearing was held on June 8, 2021, at which time Petitioner was permitted to proceed *pro se*.

11. Petitioner filed an amended petition on September 14, 2021, raising six claims, plus a cumulative prejudice claim.

12. The Commonwealth filed a motion to dismiss the amended petition on November 19, 2021.

13. The Commonwealth did not oppose an evidentiary hearing on Petitioner's claim of after discovered evidence and/or a *Brady* violation, which claim only relates to CP-51-CR-0012018-2013.

14. On December 13, 2021, the court entered an order scheduling a hearing on Petitioner's claim of after discovered evidence and/or *Brady* violation as to CP-51-CR-0012018-2013.

15. The hearing commenced on March 22, 2022, and continued on June 3, 2022.

16. The matter was then continued for preparation of the notes of testimony and a decision.

FINDINGS OF FACT

17. The Amended Petition raises seven (7) claims:

- i. The warrant, as well as the search of petitioner's vehicle and seizure of evidence pursuant thereto were defective, and the evidence should have been excluded from trial.

- ii. Petitioner's subsequent warrantless arrest for the robberies of Everal Laing and Krystal Cruz, was unlawful, and the identification procedures were defective.
- iii. Irrelevant and prejudicial evidence was admitted at trial.
- iv. It was error to admit the out-of-court statement of Raheem Baynes at trial.
- v. Petitioner was denied the right to compulsory process when the court precluded him from presenting certain witnesses and information from a witness's parole file.
- vi. The Commonwealth violated *Brady v. Maryland* by withholding exculpatory statements Complainant Raheem Baynes made to Detective Joseph Cremen.
- vii. The Cumulative effect of the foregoing violations violated Petitioner's right to due process.

18. Petitioner's first, second, third and fifth issues were previously litigated on direct appeal. *See Rahman*, Superior Court Opinion, July 1, 2019, at 4–9, 11-13; Trial Court Opinion, June 30, 2018, §§ 1.a, 1.d, 2.b, 2.d, 2.j.

19. Petitioner's fourth claim, relating to the out-of-court statement of Raheem Baynes, was raised in his separate appeal of CP-51-CR-0012018-2013, which was dismissed by the Superior Court on Judgement Order dated November 27, 2019, under No. 2550 EDA 2018, is also previously litigated. *See also* Trial Court Opinion, June 30, 2018, § 2.e.

20. On March 25, 2022, Raheem Baynes, *aka* Raheem Baynes Porter ("Baynes"), testified at a hearing on Petitioner's PCRA petition. NT 3/25/22.

21. Baynes was robbed along with Aaron Slaughter on July 19, 2013.

22. Baynes gave a statement to Detective Valentine later that same day. P-1.

23. Baynes initially testified at the hearing that he ran into the person who robbed him a couple of days after he was interviewed by police on July 19, 2013. NT 3/25/22, 11-12; P-3.

24. Baynes testified that his cousin helped him get the items stolen from him returned from the person who robbed him. NT 3/25/22, 9-10, 19-20; P-3.

25. At the time of the hearing Baynes cousin, Kevin Lowe, was deceased. NT 3/25/22, 58.

26. Baynes did not testify to the name of the person from whom he and his cousin allegedly recovered his belongings.

27. Baynes testified that he told Aaron Slaughter, the other person who was robbed at the same time, with whom Baynes was in a relationship, that Baynes had gotten his stolen property back. NT 3/25/22, 21-22, 41-42.

28. Slaughter, who testified at trial, was not called as a witness at the hearing on the Amended Petition, nor was an affidavit from Slaughter submitted with either the Petition or the Amended Petition.

29. Slaughter's phone was recovered from a car in which Petitioner's girlfriend was seated when Petitioner was arrested on July 21, 2013, in the act of robbing Kyle Stanley. *See* Memorandum Opinion (6/3/18), 6-8.

30. Also recovered from the vehicle were 11 phones, an iPad and various documents, including club cards, various papers and Petitioner's driver's license. NT 12/12/16, 99-105; C-12A-F, C-13, C-15, C-17M, C-62.

31. Mr. Slaughter viewed an 8-person photo array and identified Appellant as the man who robbed him and Raheem Baynes on July 19, 2013. NT 12/8/16, 80-82, NT 12/12/16, 50-51.

32. Mr. Slaughter identified one of the phones recovered from the vehicle as his phone. NT 12/8/16, 71, 83; C-52, C-65.

33. At trial Mr. Slaughter identified Petitioner as the person who robbed him and Baynes. NT 12/8/16, 62, 82.

34. Baynes testified that after his initial interview, he was contacted by a detective, who asked him to come in to view some photographs of the possible perpetrator of the robbery. NT 3/25/22, 12, 39; P-3.

35. Baynes declined to come in to view photographs. NT 3/25/22, 13, 55; P-3.

36. Baynes testified that he told the detective that the reason he didn't want to come in was because he had gotten his belongings back. NT 3/25/22, 40.

37. Baynes testified that he did not speak to any police officer or representative of the district attorney after declining the request to view photos. NT 3/25/22, 41-42.

38. Baynes testified that no one called to ask him to come to court to testify at trial, NT 3/25/22, 42.

39. Baynes testified that Assistant District Attorney, Courtney Malloy, specifically, did not call to ask him to come to court to testify at trial, and that he did not have a conversation with her about coming to court. NT 3/25/22, 46, 47.

40. When specifically asked whether he told ADA Malloy "that she already had Mr. Slaughter's testimony and didn't need [him]," Baynes testified: "That sounds like me but I don't recall." NT 3/25/22, 46-47.

41. Baynes testified that he did not receive a subpoena to testify. NT 3/25/22, 42-44.

42. Baynes testified that he was no longer living at the address on the subpoena when it was issued for the December 2016, trial. NT 3/25/22, 59; P-3.

43. In August of 2021, Baynes was contacted over Facebook by Petitioner's then girlfriend, Ebony Haines. NT 3/25/22, 13-14; P-2.

44. Haines told Baynes that the person charged with robbing him was locked up. NT 3/25/22, 15-16; P-3.

45. Baynes testified that he told Haines that was impossible, because he had just seen the person who robbed him. NT 3/25/22, 16; 52, 54.

46. Baynes wrote in a signed statement dated August 22, 2021, which he provided to Ms. Haines, that he had just seen the person who robbed him "like a month ago." P-3 (also Exhibit G to the Amended Petition); NT 3/25/22, 19-20.

47. Baynes testified that he had seen the person who robbed him at a Wine and Spirits store in July of 2021. NT 3/25/22, 47-51.

48. Petitioner was incarcerated in July of 2021, and has been incarcerated since his bail was revoked during trial in December of 2016. NT 12/14/16, 60; 5/17/17, 57.

49. In the courtroom at the time of the hearing, during examination by Petitioner, Baynes testified that the person who robbed him was not present in the courtroom. NT 3/25/22, 23-24.

50. Detective Cremen testified at trial on December 12, 2016, that he believed he spoke with Mr. Baynes on the phone to meet face to face and he may have spoken with him again to make arrangements for Baynes to come in, but was not successful and Baynes was not shown a photo array. NT 12/12/16, 132-133, 135.

51. At the time of the hearing in June of 2022, Detective Cremen could not say for sure whether or not he had actually spoken with Baynes, beyond the belief he testified to at trial in 2016. NT 6/2/22, 18-20, 28-29.

52. At the time of the hearing in June of 2022, Detective Cremen could not recall that Mr. Baynes told him that he got his property back from the man who robbed him. NT 6/2/22, 25.

53. Detective Cremen testified credibly at trial and at the hearing on the Amended Petition.

54. Coordinating the testimony of Mr. Baynes and Detective Cremen, demonstrates that Detective Cremen did attempt to contact Baynes to ask him to come in to view photos of suspects shortly after the robbery in 2013.

55. Coordinating the testimony of Mr. Baynes and Detective Cremen, demonstrates that Detective Cremen did speak with Baynes and asked him to come in to view photos of suspects shortly after the robbery in 2013.

56. Baynes did not tell Detective Cremen that he had recovered his stolen property.

57. Baynes did not tell Detective Cremen that he had seen and spoken to the person who robbed him shortly after the robbery.

58. Baynes refused to come in to meet with Detective Cremen or view photographs.

59. Detective Cremen did not withhold any information provided by Baynes from the prosecutor or Petitioner.

60. ADA Malloy, trial counsel for the Commonwealth, started attempts to contact Baynes and procure his attendance weeks before trial. NT 3/25/22, 108.

61. ADA Malloy had police attempt to locate Baynes during trial in order to procure his testimony for trial. NT 3/25/22, 94-95, 110.

62. Baynes was aware that he was wanted as a witness for trial in December of 2016. NT 3/25/22, 95, 109.

63. Baynes was not answering calls from the prosecution, but ADA Malloy was able to speak with him by using the phone of Aaron Slaughter, Bayne's "ex" and co-robbery victim. NT 3/25/22, 96.

64. Baynes told ADA Malloy that he was not interested in participating in the case and he wanted nothing to do with it. NT 3/25/22, 96.

65. Baynes was told that if he did not agree to accept service of a subpoena and appear at trial, the prosecutor could seek a warrant for his appearance. NT 3/25/22, 95, 109.

66. Baynes told ADA Malloy that he would not be home if there was an attempt to serve a warrant, NT 3/25/22, 95, 109.

67. ADA Malloy testified credibly regarding her efforts to have Mr. Baynes' appear and testify at trial.

68. ADA Malloy testified credibly regarding her complete conversation with Mr. Baynes.

69. Baynes did not tell ADA Malloy that he had recovered his stolen possessions.

70. Baynes did not tell ADA Malloy that he had seen and spoken with the person who robbed him a few days after the incident.

71. Baynes did not tell ADA Malloy that he had given this information about having met the perpetrator or recovered his belongings to Detective Cremen or any other police officer/detective.

72. The Commonwealth did not withhold any information provided by Baynes from Petitioner.

73. Mr. Baynes did not testify credibly.

74. Having observed the demeanor and considered the testimony, the willingness or unwillingness to engage in the investigation and level of willingness to give testimony, of both Mr. Slaughter and Mr. Baynes, the court finds there is not a reasonable probability that the jury would have credited Mr. Baynes' testimony and rejected Mr. Slaughter' testimony, and rendered a more favorable verdict.

75. Additional factors which persuaded the court that Mr. Baynes did not testify credibly, and which cause the court to find there is not a reasonable probability that the jury

would have credited Mr. Baynes' testimony and rendered a different verdict more favorable to Petitioner, included:

- a. His failure to cooperate with police in viewing a photo array;
- b. His refusal to testify at trial;
- c. His failure to provide the name or other identifying information about the person from whom he claimed to have recovered his belongings;
- d. His failure to tell police or the prosecutor he had allegedly seen the alleged perpetrator two days after the robbery;
- e. His failure to tell police or the prosecutor that he allegedly met with the person and recovered his belongings shortly after the robbery;
- f. His failure to tell police or the prosecutor that he allegedly told Mr. Slaughter he had recovered his belongings; and
- g. His clearly partisan conduct and testimony on behalf of Petitioner during the hearing (NT 3/25/22, 38, 39, 52, 53, 55).

76. "[T]he Court had provided funds for a defense investigator, and indeed had gone to war with the finance office on [Petitioner]'s behalf to ensure that all needed investigative funds were available to [Petitioner]." Memorandum Opinion (6/30/19), 19.¹

77. Petitioner did not present any evidence that he attempted to interview Baynes prior to trial.

78. Mr. Baynes' information regarding the alleged recovery of his belongings and his encounter with the alleged robber, though not deemed credible in this proceeding, was available

¹ On May 7, 2014, and August 29, 2014, the Honorable Daniel Anders, entered an order authorizing funds for an investigator. On the latter date, Judge Anders also ordered the Commonwealth to provide the names and addresses of Commonwealth witnesses to the investigator. Judge Anders entered a further order authorizing fees for Petitioner's chosen investigator on July 17, 2015. On November 20, 2015, Judge Anders granted Petitioner's investigator an additional \$2,500 for investigation.

to Petitioner prior to trial by the exercise of reasonable diligence in utilizing the investigator funded for him by the court to interview Baynes.

79. Petitioner has not demonstrated the failure of any of his claims for lack of prejudice, in support of his claim of cumulative prejudice.

80. Petitioner has not set forth specific, reasoned, legally and factually supported arguments for his claim of cumulative prejudice.

81. Petitioner has not demonstrated that any alleged non-prejudicial claims enjoy a reasonable and logical connection warranting a conclusion that the cumulative effect was of such moment as to establish actual prejudice.

CONCLUSIONS OF LAW

82. To be entitled to PCRA relief, a petitioner bears the burden of proving, by a preponderance of the evidence, that his conviction or sentence resulted from one or more of the circumstances enumerated in 42 Pa.C.S. § 9543(a)(2), which include a violation of the Pennsylvania or United States Constitution or ineffectiveness of counsel, any one of which “so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa.C.S. § 9543(a)(2)(i) and (ii).

83. A party must make a timely and specific objection in order to preserve an issue for appeal. *Commonwealth v. Brown*, 701 A.2d 252, 254 (Pa. Super. 1997).

84. In order to obtain PCRA relief, a claim of error must not have been previously litigated or waived. *Commonwealth v. Rivera*, 199 A.3d 365, 374 (Pa. 2018); 42 Pa.C.S. § 9543(a)(3).

85. A claim is previously litigated if the highest appellate court could have ruled on it as of right or has ruled on the merits of the issue. 42 Pa.C.S. § 9544(a)(2).

86. A claim is waived if the petitioner could have raised the issue before trial, at trial, or on direct appeal but failed to do so. 42 Pa.C.S. § 9544(b).

87. When a claim was not raised at trial or on direct appeal, it is waived under the PCRA, unless an exception applies and since Appellant represented himself at trial and on appeal, he cannot raise a derivative claim of ineffective assistance of trial or appellate counsel on collateral review. *Commonwealth v. Blakeney*, 108 A.3d 739, 749 (Pa. 2014).

88. Failure to comply with an appellate court's briefing order can result in waiver of consideration of a claim. Pa.R.A.P. 2101; *Commonwealth v. Martz*, 232 A.3d 801, 809 n. 4 (Pa. Super. 2020) (citing *Commonwealth v. Williams*, 959 A.2d 1252, 1258 (Pa. Super. 2008)).

89. "[T]o establish a *Brady* violation, a defendant is required to demonstrate that exculpatory or impeaching evidence, favorable to the defense, was suppressed by the prosecution, to the prejudice of the defendant." *Commonwealth v. Gibson*, 951 A.2d 1110, 1126 (Pa. 2008).

90. "[F]avorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-434 (1995)(internal quotation marks omitted).

91. The burden of proof is on the petitioner to demonstrate that the Commonwealth withheld or suppressed evidence. See *Commonwealth v. Porter*, 728 A.2d 890, 898 (Pa. 1999).

92. "[T]he United States Supreme Court has held that '[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense.'" *Commonwealth v. Spotti*, 94 A.3d 367, 383 (Pa. Super. 2014), citing *Commonwealth v. Ly*, 980 A.2d 61, 75-76 (Pa. 2009) (internal citations omitted).

93. As to *Brady* claims advanced under the PCRA, a defendant must demonstrate that the alleged *Brady* violation "so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." See *Commonwealth v. Copenhefer*, 719 A.2d 242, 259 (Pa. 1998).

94. "A *Brady* claim, however, will not afford [a petitioner] relief if he either knew of the existence of the evidence in dispute or could have discovered it by exercising reasonable diligence." *Commonwealth v. Smith*, 17 A.3d 873, 902 (Pa. 2011).

95. A Petitioner may be eligible for relief under the PCRA if he pleads and proves by a preponderance of the evidence that his conviction resulted from "[t]he unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." 42 Pa.C.S. § 9543 (a)(2)(vi).

96. "To obtain relief based on after-discovered evidence, [a petitioner] must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted." *Commonwealth v. Pagan*, 950 A.2d 270, 292 (Pa. 2008). "The test is conjunctive." *Id.*

97. In regard to after discovered witness testimony, "the question is whether the nature and quality of the evidence is such that there is a reasonable probability that the jury would have credited it and rendered a more favorable verdict. That assessment must include a recognition of the impeachability of the witnesses, and not merely a viewing of their testimony in a most favorable light. Some witnesses may display a demeanor, or be subject to such strong impeachment ... that the court is convinced that no reasonable jury would believe them." *Commonwealth v. Johnson*, 966 A.2d 523, 542 (Pa. 2009).

98. No number of claims that fail because of lack of merit or arguable merit may collectively warrant relief if they fail to do so individually. *Commonwealth v. Spatz*, 84 A.3d 294, 321 n. 22 (Pa. 2014).

99. “Although cumulative prejudice from individual claims may be properly assessed in the aggregate when the individual claims have failed due to lack of prejudice, nothing in our precedent relieves an appellant who claims cumulative prejudice from setting forth a specific, reasoned, and legally and factually supported argument for the claim. A bald averment of cumulative prejudice does not constitute a claim.” *Commonwealth v. Hutchinson*, 25 A.3d 277, 318–19 (Pa. 2011) (internal citations omitted) (emphasis added).

100. In order to obtain relief on a cumulative prejudice claim, the individual claims deemed to fail for lack of prejudice must have a “reasonable and logical connection warranting a conclusion that the cumulative effect was of such moment as to establish actual prejudice.” *Spatz*, 84 A.3d at 321 n. 22.

101. Petitioner has failed to carry his burden by a preponderance of evidence regarding *Brady* violations or after discovered evidence as to the allegedly exculpatory testimony of Raheem Baynes, where:

- a. The Commonwealth (or the police) did not suppress or withhold information about allegedly exculpatory evidence regarding Raheem Baynes;
- b. The testimony of Raheem Baynes was not material;
- c. The allegedly exculpatory testimony of Raheem Baynes was available at the time of trial and would not have changed the outcome of the trial if it had been introduced; .
- d. There is not a reasonable probability that the jury would have credited the testimony of Raheem Baynes and rendered a more favorable verdict;

- e. The testimony of Raheem Baynes would not be likely to result in a different verdict if a new trial were granted; and
- f. Petitioner could have discovered the testimony of Raheem Baynes by exercising reasonable diligence.

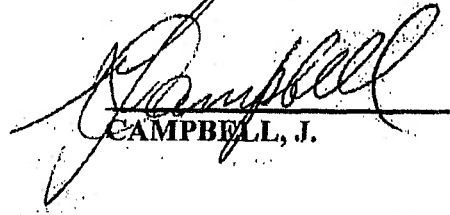
102. Even if the testimony of Raheem Baynes had been withheld in violation of Brady, or the evidence was not available at the time of trial and could not have been discovered by Petitioner's exercise of reasonable diligence, Petitioner suffered no prejudice, where the testimony of Mr. Slaughter, including his in and out-of-court identification of petitioner, the recovery of Mr. Slaughter's phone in the car with all the other stolen property and Petitioner's identification and girlfriend, while Petitioner was in the process of committing a robbery of Mr. Stanley with a similar *modus operandi*, Petitioner suffered no prejudice from the absence of Mr. Baynes' testimony.

103. Petitioner has failed to plead and prove, with legal and logical support that there were multiple claims of merit denied due to lack of prejudice, the cumulative effect of which demonstrates a reasonable and logical connection warranting a conclusion that the cumulative effect was of such moment as to establish actual prejudice.

104. Petitioner's claims regarding the warrant and search of petitioner's vehicle and seizure of evidence, identification procedures and arrest for the robberies of Everal Laing and Krystal Cruz, admission of allegedly irrelevant and prejudicial evidence at trial, admission of the out-of-court statement of Raheem Baynes at trial; and precluding evidence from a witness's parole file (Amended PCRA, Claims i.-v.), were all previously litigated, or waived.

WHEREFORE, for the reasons set forth above, Petitioner Omar Rahman's Petition for Post-Conviction Relief is denied.

BY THE COURT:



CAMPBELL, J.

Commonwealth v. Omar Rahman

Case Number: CP-51-CR-10006-2013
CP-51-CR-12018-2013
CP-51-CR-9988-2013
CP-51-CR-12044-2013
CP-51-CR-13648-2013

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing upon the person(s), and in the manner indicated above, which service satisfies the requirements of Pa.R.Crim.P.114:

Defendant/ProSe:

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Dated: October 24, 2022



Vanessa A. Campione
Judicial Secretary to
Honorable Giovanni O. Campbell

Commonwealth v. Omar Rahman

Case Number: CP-51-CR-10006-2013
CP-51-CR-12018-2013
CP-51-CR-9988-2013
CP-51-CR-12044-2013
CP-51-CR-13648-2013
2932 EDA 2022
2935 EDA 2022
2937 EDA 2022
2938 EDA 2022
2939 EDA 2022

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing upon the person(s), and in the manner indicated above, which service satisfies the requirements of Pa.R.Crim.P.114:

Defendant/ProSe:

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Type of Service () Personal (X) First Class Mail

Dated: December 15, 2022



Jeffrey Whittington
Judicial Tipstaff to
Honorable Giovanni O. Campbell