

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

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : NO. CP-46-CR-0003932-2016
 :
 WILLIAM H. COSBY, JR. :

**SUPPLEMENT TO DEFENDANT’S MOTION TO DISMISS
FOR PROSECUTORIAL MISCONDUCT**

Defendant William H. Cosby, Jr., by and through his attorneys, submits this Supplement to his Motion to Dismiss for Prosecutorial Misconduct submitted on January 25, 2018, with the following new information not known at the time of filing. Specifically, prior defense counsel had learned about the prosecution’s interview of a critical defense witness prior to trial in June 2017. Below is the background and significance of the information that defense counsel has learned since the time of submitting Mr. Cosby’s motion to dismiss.

During the second week of January 2018, Mr. Cosby’s defense team learned for the first time that Marguerite Jackson, a former friend and colleague of Andrea Constand and a critical witness for the defense, had been interviewed by Montgomery County detectives prior to the June 6, 2017, trial in this case. Ms. Jackson provided this information and stated that she saw one of the persons interviewing her taking notes. Defense counsel had seen no information regarding this interview in the files of prior counsel. Significantly, Assistant District Attorney Stew Ryan conceded during a January 17, 2018, telephone conference with counsel and this Court that the interview had occurred. Yet, even though defense counsel on the Court call raised the possibility of a *Brady* violation, Mr. Ryan at no time on the call stated that he had disclosed any information about the interview to Ms. Cosby’s prior defense counsel before the first trial. Mr. Ryan denied that there were notes and stated if any notes had been taken they would have

been destroyed. Inexplicably, no memorandum of interview with Ms. Jackson was prepared because, according to Mr. Ryan, the information she provided to the Commonwealth was consistent with what she had told the defense, namely that accuser Andrea Constand had confided in Ms. Jackson in the past that Ms. Constand had not been sexually assaulted but that she had conceived of a plan to lie about a sexual assault for the purpose of extorting money. Following the Court call, on January 19, 2018, defense counsel Sam Silver wrote a letter to Mr. Ryan to confirm, among other things, his understanding that Mr. Ryan had not disclosed the Commonwealth's meeting with Ms. Jackson during the initial trial, or at any time until his disclosure on the January 17, 2018 call.

The revelation that the Commonwealth had talked to Ms. Jackson about her conversation with Ms. Constand, that notes had been taken and then apparently destroyed, and that the prosecution nevertheless stood silent while Ms. Constand denied under oath even knowing Ms. Jackson, prompted defendant to file his Motion to Dismiss because this pattern of conduct falls far below the constitutional mandates of due process and a fair trial and shirks the ethical requirements of the prosecution to guarantee these basic constitutional rights. *See, e.g., Commonwealth v. Adams*, 2017 PA Super 413, -- A.3d --, 2017 WL 6604025 (2017) at *10-12 (Dec. 27, 2017) (discussing joint *Brady* obligations of prosecutors and police, and holding that “the police violate *Brady* when they destroy or fail to preserve exculpatory evidence, regardless of intention” and that they “also violate a defendant’s due process rights when they destroy ‘potentially useful’ evidence, and do so in bad faith”).

Notably, the day after defendant submitted his Motion to Dismiss, the Commonwealth finally responded by letter to Mr. Silver’s January 19, 2018 letter. In the Commonwealth’s January 26, 2018, letter, Mr. Ryan stated that he had discussed with Detective James Reape the

Jackson interview that had been conducted by him and Detective Reape, that Mr. Ryan does not recall taking any notes, and that Detective Reape does not recall whether he took any notes. In this letter, Mr. Ryan said nothing about any exchange between the Commonwealth and prior defense counsel regarding the Jackson interview prior to or during the June 2017 trial.

However, in a letter to this Court dated January 31, 2018, without any effort to discuss the matter with current defense counsel, Montgomery County District Attorney Kevin Steele objected to the “continued admission pro hac vice” of defense counsel, vaguely claiming that “false” statements were made, presumably in the Motion to Dismiss. Mr. Steele did not elaborate about this alleged “false” statement but protested further representation by defendant’s team of counsel. Moreover, on that same date, defense counsel Sam Silver received correspondence from Mr. Ryan with an attached email dated January 26, 2018, from prior counsel Brian McMonagle, stating that Mr. Ryan had orally confirmed Ms. Jackson’s disclosure to Mr. McMonagle that the prosecution had interviewed her and that Mr. Ryan had represented that no notes had been taken. This was the first time that current counsel learned of such an exchange between Mr. McMonagle and Mr. Ryan. Defense counsel promptly submitted a letter to this Court, responding to Mr. Steele’s letter and explaining the sequence of events set forth above. Defense counsel confirmed on February 2, 2018, with Mr. McMonagle that Mr. Ryan did in fact disclose the Commonwealth’s interview with Ms. Jackson prior to the first trial. Defendant thus requests that the Court consider this supplement to defendant’s Motion to Dismiss for Prosecutorial Misconduct.

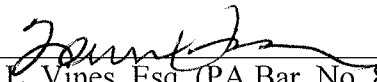
This sequence of events set forth here only further confirms that there remain serious questions which must be examined by the Court. While Mr. Ryan and Detective Reape may not recall whether either of them took notes, Ms. Jackson *does* recall notes being taken. If, as stated

by the only percipient witness who recalls, notes were taken and no notes presently exist, then the notes must have been lost or destroyed. Moreover, the principal argument in the Motion to Dismiss remains the same: the Commonwealth stood by while Ms. Constand testified that she did not know or remember Ms. Jackson, even though the prosecution had every reason to doubt the veracity of Ms. Constand's testimony because, from their own interview of Ms. Jackson, they knew about her close working relationship with Ms. Constand and the statements Ms. Constand made to her.

As requested in defendant's Motion to Dismiss, at a minimum, this Court should conduct an evidentiary hearing regarding the conduct of the Commonwealth. The defense should be able to explore the Montgomery County Detective Bureau's policy on note taking, memoranda of interviews, and destruction of notes. Certainly, law enforcement has a duty to memorialize its investigative efforts, exculpatory and favorable to the defense; the Constitution requires it. Further, the Court should make a determination whether the prosecution did anything to investigate the credibility of its principal witness, Ms. Constand, in light of their interview of Ms. Jackson, or whether they knowingly participated in presenting false testimony and knowingly used that testimony to prevent Ms. Jackson from testifying and rebutting Ms. Constand's story. In short, the defense maintains that, without those questions adequately answered, the prosecution's conduct warrants sanction, including dismissal.

Dated: February 5, 2018

Respectfully Submitted,

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PUBLIC ACCESS POLICY CERTIFICATION

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

Dated: February 5, 2018


Lane L. Vines