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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.

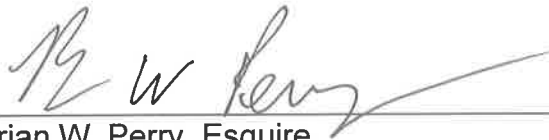
10. The trial court abused its discretion, erred, and infringed on Mr. Cosby's constitutional rights in finding that Mr. Cosby was a sexually violent predator pursuant to SORNA where the Commonwealth expert relied upon unsubstantiated, uncorroborated

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,

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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.



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:

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