

CLAIMS FOR RELIEF

A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.³

Introduction.

31. As this quote from a recent United States Supreme Court capital-case opinion makes clear, criminal litigation is not supposed to be a game of “hide and seek.” Regrettably, due to the misconduct of the prosecutor in this case, that is what occurred. As the Court will see from the ensuing claims, the prosecutor played fast and loose with his responsibilities. He failed to disclose evidence that he was required to present to the defense. Prosecutor King failed to disclose exculpatory results of laboratory testing on items seized from Petitioner’s home. He then made argument to the jury, and presented other evidence, which was completely rebutted by the undisclosed lab reports. Prosecutor King lied to defense counsel, the court and the jury.

³Banks v. Dretke, 124 S. Ct. 1256, 1275 (2004).

Current counsel have discovered this only because they were given access by this Court to the United States Postal Service file, which has been previously undisclosed to defense counsel.

32. The prosecutorial misconduct in this case was bad enough. However, on top of it, Petitioner was represented by a lawyer, who, in a word, was hapless: he had too little time, too little skill, and too little knowledge and experience in criminal matters to investigate and defend a capital case.⁴ He took only what the prosecutor offered. He was not a self-starter, and he failed to even begin to test the true contours of the prosecution's case. As a result, the jury never heard the truth – it heard only the prosecutor's twisted version of it.

33. The premier act of prosecutor King's misconduct relates to the suppression of an exculpatory set of lab results. Items were seized from Petitioner's home that had red stains on them, including a pair of sneakers. King argued to the jury and presented evidence suggesting that these stains were a combination of the victim's blood and barbeque sauce from the restaurant. Particularly damning, was the evidence that sneaker prints were found in the barbeque sauce. While King made these arguments and presented this evidence, he had in his possession lab reports showing that there was no trace of either blood or barbeque sauce found on any of the seized items.

34. There was more. The prosecution case was built around six core witnesses: co-defendant Donald "Razor" Jackson; Pierre Blassingame; Renard Mills; Eric Burley and his brother Leonard Wells; and Donald Blackson. There was also testimony regarding the alleged

⁴In perhaps the most shocking illustration of how overmatched this lawyer was, he did not have an investigator to assist in this complex capital. Indeed, when he was questioned in a prior proceeding about his investigation, he readily admitted that he used the wife of a janitor employed in his building to conduct his investigation. (NT 7/18/86, 29).

“excited utterance” of one of the deceased victims, Mary Louise Figueroa. As will be conclusively shown in the following pages, the testimony of each of these witnesses was tainted by either prosecutorial misconduct (i.e. suppression of exculpatory and impeaching evidence); utterly ineffectual performance by defense counsel or incorrect legal rulings by the court (many of which trial counsel failed to catch).

35. The trial that resulted in the conviction and death sentences for Ralph Trent Stokes was a sham – the hollow shell of an adversarial proceeding. Petitioner will show this in the ensuing claims by going, point by point, through the testimony of these witnesses to show how each was tainted.

36. Without any question, the most troubling aspect of this case is that Petitioner’s convictions and sentences rest upon the misconduct of a prosecutor that spanned the course of the proceedings. This was a prosecutor who not only steam rolled hapless defense counsel in this case, but who has done it as a matter of habit throughout his career.⁵ He not only failed to

⁵The prosecutor, Roger King, is legendary for his misconduct, and has been cited for it in numerous published opinions. See Commonwealth v. Dennis, 715 A.2d 404, 411, 412 (Pa. 1998) (Court found him to have acted improperly, but split 4-3 on the question of whether the conduct required a new trial); id. at 419-420 (Zappala, J., joined by Saylor, J. and Flaherty, C.J., dissenting) (“The prosecutor continually encouraged the jury to focus their attention not on the evidence, but on the larger problems of society in rendering their verdict. He consistently appealed to their fears and emotions, reminding them that some people, apparently not them, can go ‘to sleep without locking their doors,’ and ‘walk the streets at night and not be afraid.’ He stressed that the case was about ‘right’ and ‘freedom,’ including ‘the right to take public transportation without the fear of someone waiting to get paid.’ He implied that through their verdict, the jurors as ‘the community,’ as ‘the Commonwealth,’ could ‘get involved’ and vindicate, not just the victim in this case, but all of society, reminding them that ‘these are your streets,’ and ‘your town.’ On this record, I would conclude that the unavoidable effect of the prosecutor’s comments was to prejudice the jury and prevent them from rendering a fair and impartial verdict in the case.”); Commonwealth v. Upchurch, 513 A.2d 995, 998, 1001 (Pa.Super. 1986) (court found King’s comments “borderline improper”); Commonwealth v. Floyd, 476 A.2d 414 (Pa.Super. 1984) (King failed to disclose a prior photographic identification

disclose required impeachment material, he withheld exculpatory police and laboratory reports which to this day are not in the official file of the Philadelphia District Attorney, but which habeas counsel have secured from the Postal Service file.

37. Indeed, even as Petitioner puts the finishing touches on this *Petition*, the possibility has arisen that prosecutor King may have acted improperly by absconding with the archived homicide file. Respondents' counsel attempted to comply with this Court's May 26, 2004 order permitting counsel to have access to the police department homicide file maintained by the City of Philadelphia Archive. What Respondents' counsel learned however, is that the file was missing from the archive and may have been **signed out to Mr. King and its whereabouts are currently unknown.**⁶ If this is true, it would not be the first time that a file has disappeared

of the defendant: "Because defendant's counsel was lulled into opening the door to its admissibility by the Commonwealth's failure to disclose its existence in accordance with court rules, a new trial is required."); affirmed, 498 A.2d 816 (Pa. 1985); Commonwealth v. Brown, 414 A.2d 70, 77, 81 (Pa. 1980) (King made comment in closing that "was gratuitous and of no particular relevance to this lawsuit and was, therefore, ill advised."); Id., at 81 (Roberts, J. dissenting) (new trial required because of demonstration done by King's witness and colloquy related to demonstration "served to further inflame the minds and passions of the jurors"); Commonwealth v. Ford Howard, 543 A.2d 1169, 1175, 1179 (Pa.Super. 1988) ("the prosecutor's actions have brought this case to the brink of reversal and display an irresponsibility which conflicts with the public trust placed in its office."); id., at 64-65 (Wieland, J. dissenting) (King's made "an intentional series of remarks calculated to impair the defendant's right to a fair trial by having the jury focus on an irrelevant and highly prejudicial fact . . ."); Commonwealth v. Crawley, 526 A.2d 334, 346 (Pa. 1987) ("The Appellant next asserts that it was prosecutorial misconduct for the prosecutor to argue during closing statements at the sentencing hearing that the jury should impose the death penalty as a message to a judge who had previously sentenced the Appellant following his 1971 guilty plea for second degree murder. We agree."); Commonwealth v. Charles Brown, 676 A.2d 1178, 1184 (Pa. 1996) ("The prosecutor should have heeded the trial court's rulings and rephrased his questions to make this point. We find, however, that the prosecutor's unartful questioning did not warrant a mistrial. . . . The prosecutor's question was overly dramatic . . .").

⁶Respondents' current counsel have been kind enough to conduct a search for the file, which is on-going. Petitioner appreciates their efforts. However, in the event that the search is

from a Roger King prosecution. In at least two other capital cases known to counsel (Commonwealth v. James Dennis and Commonwealth v. James Jones) all or part of the police homicide file, that should be maintained in the City of Philadelphia Archive, were signed out by Mr. King, were never returned, and are missing.⁷

38. As with many such cases of prosecutorial misconduct, this is a factually complex case, and it has required counsel to sift the available evidence and records to uncover this misconduct. Indeed, counsel may not even be at the end of the sifting, inasmuch as the archived homicide file is still missing. Petitioner requests the Court's indulgence, because although counsel have tried to be concise, it is necessary to a proper explanation and evaluation of the claims that the relevant facts be presented at several points in the *Petition*.

39. On January 11, 2003, then-Illinois Governor Ryan made remarks accompanying his blanket commutation of the entire death row in that state. Among other things, he said: "Our capital system is haunted by the demon of error – error in determining guilt, and error in determining who among the guilty deserves to die. . . In almost every one of the [cases of the] exonerated [], we not only have breakdowns in the system with police, prosecutors and judges, we have terrible cases of shabby defense lawyers." This case has all of the elements that caused Governor Ryan to clear death row: police and prosecutorial misconduct; legal error and abysmal defense lawyering. There can be no question but that once all of the following claims are

unsuccessful, Petitioner will make a separate filing addressing the missing file's implications for this litigation. In addition, Respondents' counsel and undersigned counsel have agreed in writing that the AEDPA limitations period be briefly extended following the point in time that either the file is located, or a determination is made that it cannot be found.

⁷In the event that Respondents' counsel cannot locate the file, Petitioner may file with the Court motions seeking discovery in order to determine precisely what happened to this file.

reviewed, this Court will be left with no confidence in the verdict rendered in this case.

CLAIM I. UNDISCLOSED EXCULPATORY LAB REPORTS: PETITIONER’S RIGHT TO DUE PROCESS OF LAW WAS VIOLATED WHEN THE PROSECUTOR FAILED TO DISCLOSE EXCULPATORY LABORATORY RESULTS OF TESTING DONE ON ITEMS REMOVED FROM PETITIONER’S RESIDENCE, AND THEN MADE FALSE REPRESENTATIONS TO THE JURY REGARDING THESE ITEMS.

A. Introduction.

40. Contained within the Postal Service file that was ordered disclosed by this Court on May 26, 2004, habeas counsel have discovered previously undisclosed laboratory reports of testing done on items seized from Petitioner’s home. While the prosecutor argued to the jury that these seized items contained blood and barbeque sauce found near the body of one of the victims, in reality these items did not contain the incriminating sauce. What’s more, the prosecutor was unquestionably in possession of these reports when he made his misrepresentations to the jury.

41. The failure to disclose these exculpatory reports violated due process. Additionally, the prosecutor’s deliberate misrepresentations regarding the items tested, not only violates due process, but should shock the conscience of this Court.

42. From his opening plea of not guilty, to his distraught behavior at his capital sentencing proceeding, Petitioner proclaimed his innocence. At the sentencing hearing, Ralph Trent Stokes cried out in outrage and despair at Mr. King: “You don’t care about who did this. All you care about is your reputation.” NT 14.66. Now, more than twenty years have passed, but Petitioner’s angry, frustrated words have been proven true: he did not commit these offenses, and prosecutor King lied and cheated to obtain his conviction.