

DISTRICT ATTORNEY'S OFFICE

By: PATRICIA CUMMINGS
Assistant District Attorney, Supervisor
Conviction Integrity Unit

Three South Penn Square
Philadelphia, PA 19107
215-686-8747

**IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION**

**COMMONWEALTH OF
PENNSYLVANIA**

v.

ROBERT OUTLAW

:
:
:
:
:
:
:

CP-51-CR-1101321-2003

**MEMORANDUM IN SUPPORT OF MOTION
FOR *NOLLE PROSEQUI* PURSUANT TO PA. R. CRIM. P. 585(a)**

LAWRENCE KRASNER, the District Attorney of Philadelphia County, by his representative, Patricia Cummings, Assistant District Attorneys, respectfully submits this MEMORANDUM IN SUPPORT OF MOTION FOR *NOLLE PROSEQUI* PURSUANT TO PA. R. CRIM. P. 585(a). As described in its December 16, 2021 *Motion for Nolle Prosequi* and more fully below, the Commonwealth lacks sufficient evidence to prove Defendant Robert Outlaw's guilt

beyond a reasonable doubt and respectfully requests that this Court enter a *nolle prosequi* as to all charges.

A. Facts and Procedural History

1. In December 2004, Defendant, Robert Outlaw, was convicted of first-degree murder and related offenses and sentenced to life without the possibility of parole.

2. The Superior Court has described the facts of this case as follows:

Just after midnight on September 3, 2000, Appellant, positioned behind a wall, fired at the nineteen-year-old victim, Jamal Kelly, with whom he had argued over money earlier in the day, threatening him with a firearm. Kelly, struck in the back by two bullets as he sat on the steps of a house with a young woman, crawled a short distance down the block and collapsed; he died from internal injuries thirteen days later.

Commonwealth v. Outlaw, No. 1530 EDA 2015, 2017 WL 1655574, at *1 (Pa. Super. Ct. May 2, 2017) (unpublished memorandum) (quoting *Commonwealth v. Outlaw*, 2376 EDA 2009 (unpublished memorandum) at *1–2 (Pa. Super. filed Dec. 2, 2010)) (cleaned up).

3. Although not referenced in the above excerpt from the Superior Court’s Opinion, central to the Commonwealth’s theory of the case and evidence it presented at trial was a witness named Charles Paladino.

4. Approximately three years after the crime, Mr. Paladino gave his third statement to police claiming he saw Mr. Outlaw threaten Mr. Kelly outside a bar; later that evening, he saw Mr. Outlaw actually commit the murder (in his first statement, he said he was present when the shooting occurred but he did not see the shooter and then in his second statement he said he *heard* that Mr. Outlaw was the shooter). Then just a short while later, Mr. Paladino gave a fourth statement to the

police where he said Mr. Outlaw assaulted him in an effort to intimidate him to prevent him from testifying.

5. At trial, Mr. Paladino, as well as the three other witnesses who had implicated Mr. Outlaw in the crime, recanted and/or disavowed their police interview statements claiming that the statements were the product of deception or coercion. The Commonwealth read their incriminating statements to the jury; as a result, Mr. Outlaw was convicted.

6. Several years after his conviction, Mr. Outlaw filed a petition under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541–9546, raising newly-discovered evidence and *Brady* claims.

7. In November 2018, an evidentiary hearing on those claims was held before the Honorable Diana Anhalt.

8. In January 2019, the Court granted Mr. Outlaw’s petition and ordered that he be granted a new trial.

9. The Court determined that Mr. Outlaw was entitled to relief because he presented new, credible evidence from eyewitness Katima Jackson, “who testified that she saw Derrick Alston (aka Shank) commit the murder for which [Mr. Outlaw] was convicted.” January 29, 2019 Order at 1-2. The Court further opined that the Commonwealth violated Mr. Outlaw’s right to due process by failing to disclose potentially exculpatory evidence impeaching one of its witnesses. *Id.*

10. The Commonwealth did not appeal.

B. The Commonwealth's review and reinvestigation of the case against Outlaw.

11. Counsel for Mr. Outlaw asked the Conviction Integrity Unit (CIU) in the District Attorney's Office to review his case and innocence claim.

12. The CIU was also consulted on this case by the PCRA Unit prior to the vacatur of Mr. Outlaw's conviction and by the Homicide Unit after the vacatur.

13. The CIU, in conjunction with the Homicide Unit, reviewed the case and conducted an extensive investigation into Mr. Outlaw's claim.

14. One investigative avenue the CIU explored involved Mr. Kelly's dying declaration regarding "Shank" and his involvement in the shooting (Officer Datts—"the male told me, 'Shank did it,' that was all he said." Witness Shelby Green—"Jamal, the guy who was shot. He said that Shank set him up. That's what he repeatedly said to me, the guys.").

15. Derrick Alston, AKA Shank, testified at trial and was one of the three Commonwealth witnesses who recanted earlier statements to police where he said he saw Mr. Outlaw shoot Mr. Kelly. On direct appeal, the Superior Court held that the trial court erred in allowing the Commonwealth to read Shank's statement to the jury, so the law of the case prohibits the Commonwealth from using that statement in a retrial.

16. The CIU has confirmed that Shank is deceased and, while investigating Shank's potential involvement in the homicide, the CIU has been unable to find any evidence that links Mr. Outlaw to Shank.

17. In fact, instead of finding evidence of a link between Shank and Mr. Outlaw, the CIU actually uncovered additional evidence that Shank committed the crime as suggested by Mr. Kelly's dying declaration.

18. Additional information regarding Shank's involvement in the crime was discovered during the CIU's extensive interview of Mr. Paladino conducted on June 5, 2019, at SCI Benner Township. During that interview, Mr. Paladino stated that on the night of the homicide, he saw Shank, then heard 3 – 5 gunshots, then he saw Mr. Kelly fall followed by Shank running over to where Mr. Paladino was saying, "don't go over there."

19. Because Judge Anhalt granted a new trial to Mr. Outlaw in part because of suppressed *Brady* information regarding Mr. Paladino, the CIU questioned Mr. Paladino extensively about his cooperation as a witness in this case as well as in other cases. Answers to that questioning revealed additional impeachment information regarding Mr. Paladino's credibility.

20. According to Mr. Paladino, he was a cooperating witness for the Commonwealth in at least three other homicide cases around the time he testified at Mr. Outlaw's trial. When asked for names of the cases, Mr. Paladino recalled two names, and the CIU was able to identify one homicide case where Mr. Paladino cooperated by providing a statement to the police against a defendant that ultimately pled guilty.

21. Mr. Paladino also told the CIU that his claims of witness intimidation and retaliation against Mr. Outlaw were false, and he provided detailed

information as to how those claims came about and the circumstances surrounding his report of the claims to the police.

22. Significantly, when the CIU and the Homicide Unit recently interviewed a witness in an effort to determine whether Mr. Paladino's original claims of intimidation and retaliation were true, that witness provided information that corroborated his original claims were in fact not credible. It was at that point that the DAO made its final decision to file a motion for *nolle prosequi* of all of the charges against Mr. Outlaw.

C. *Nolle prosequi* is appropriate.

23. "A *nolle prosequi* is a voluntary withdrawal by the prosecuting attorney of present proceedings on a particular bill of indictment." *Commonwealth v. Whitaker*, 359 A.2d 174, 177 (Pa. 1976). Pennsylvania Rule of Criminal Procedure 585 governs applications for *nolle prosequi* and provides in relevant part:

Upon motion of the attorney for the Commonwealth, the court may, in open court, order a *nolle prosequi* of one or more charges notwithstanding the objection of any person.

Pa. R. Crim. P. 585(A).¹ The Pennsylvania Supreme Court has stated:

[T]here are two factors to be considered when a request for a *nolle prosequi* is made: (1) is the reason given by the Commonwealth for requesting the *nolle prosequi* valid and reasonable, and (2) does the defendant, at the time the *nolle prosequi* is requested, have a valid speedy trial claim?

Commonwealth v. Reinhart, 353 A.2d 848, 853 (Pa. 1976).

¹ See also 42 Pa. C.S. § 8932 ("After the commencement of a criminal matter by the filing of an information or otherwise, the district attorney shall not enter a *nolle prosequi* or dispose of the matter or discharge a prisoner from custody by means of a proceeding in lieu of a plea or trial without having obtained the approval of the court.")

24. Here, the second factor is plainly satisfied as Mr. Outlaw has waived his speedy trial rights. Moreover, he does not oppose the entry of a *nolle prosequi*.

25. Likewise, the Commonwealth submits that its request is legitimate in light of its determination that it could not prevail at a retrial. That determination stems from the facts set forth above as well as the following:

- The eyewitness PCRA testimony of Katima Jackson claiming she saw the shooting and the shooter was Shank, not Mr. Outlaw, which was credited by the PCRA Court;
- Evidence credited by the PCRA Court that undercuts the credibility of critical Commonwealth witness;
- Undisclosed evidence at the time of trial that Mr. Paladino cooperated in at least one other homicide and he provided his statements against Mr. Outlaw pursuant to his expectation of consideration in his criminal cases and subsequent incarceration; and
- The inherent difficulty in reinvestigating and retrying any defendant for a crime that occurred more than twenty years ago, where there never was any physical evidence connecting the defendant to the crime, where witness memories have faded, and where the only witnesses who offered incriminating statements against the defendant recanted at trial and have consistently maintained the recantations are the truth and the incriminating statements are false.

26. In light of the foregoing, the Commonwealth submits that it lacks sufficient evidence to prove beyond a reasonable doubt that Mr. Outlaw is guilty of the homicide for which he is charged. In the exercise of its prosecutorial discretion, the Commonwealth has determined that the resources and effort required to pursue a prosecution under these circumstances would be better spent on other matters. *Cf. Commonwealth v. Benz*, 565 A.2d 764, 767–68 (Pa. 1989) (distinguishing prosecutor’s declination of charges based on purported insufficiency of evidence and declination based upon prosecutorial discretion).

D. Mr. Kelly’s family has been notified of the Commonwealth’s Motion to Nolle Prose

27. Heather Wames, a Victim/Witness Coordinator with the DAO, has been in communications with Mr. Kelly’s parents since before Mr. Outlaw’s conviction was vacated, and she has informed them of the status of the case.

28. Anthony Voci, the former supervisor of the Homicide Unit, met with Mr. Kelly’s father and explained the various possible outcomes after the conviction was vacated, specifically including the possibility that the charges could be *nolle prossed*.

29. Once the decision was made to move for a *nolle prosee*, Ms. Wames contacted Mr. Kelly’s father and informed him of that decision. In response, Mr. Kelly stated that he understood the decision and that he did not wish to meet with prosecutors or further participate in the process.

30. Ms. Wames sent a letter and attempted to reach Mr. Kelly’s mother by phone but was unsuccessful. Mr. Kelly’s mother resides in Maryland, and

according to Mr. Kelly's father, had previously expressed a desire not to participate further in this matter.

31. Accordingly, the Commonwealth respectfully submits that a *nolle prosequi* is warranted in this case and requests that the Court grant its December 16, 2020 MOTION FOR *NOLLE PROSEQUI* PURSUANT TO PA. R. CRIM. P. 585(a).

Respectfully submitted,

/s/Patricia Cummings

PATRICIA CUMMINGS
Supervisor, Assistant District Attorney
Conviction Integrity Unit
District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107
215-686-8747

Date: December 18, 2020

VERIFICATION

I hereby certify that the facts above set forth are true and correct to the best of their knowledge, information and belief. The Parties understand the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

/s/Patricia Cummings

PATRICIA CUMMINGS

Supervisor, Assistant District Attorney
Conviction Integrity Unit

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, a copy of the foregoing was served on by electronic mail (with consent):

Edward J. Foster, Esq.
ALVA & SHUTTLEWORTH, LLC
1520 Locust St., Suite 700
Philadelphia, PA 19102

/s/Patricia Cummings

PATRICIA CUMMINGS
Supervisor, Assistant District Attorney
Conviction Integrity Unit