

OFFICE OF THE DISTRICT ATTORNEY
CITY AND COUNTY OF PHILADELPHIA
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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA :
 :
 :
 V. :
 : CP-51-CR-1202272-2005
 :
 WILLIAM JOHNSON :

MOTION FOR *NOLLE PROSEQUI*
PURSUANT TO PA. R. CRIM. P. 585(A)

LAWRENCE KRASNER, District Attorney of Philadelphia, by his Assistants, KATHERINE ERNST and PAUL M. GEORGE, respectfully submits this Motion for *Nolle Prosequi* pursuant to Pa. R. Crim. P. 585(a). As explained below, Johnson’s 2009 conviction for third-degree murder was vacated by a federal court due to newly discovered evidence that eyewitness Brenda Bowens had sent letters to then District Attorney Lynn Abraham and trial prosecutor Carlos Vega stating that she (Bowens) had been coerced by detectives to give a false statement. These letters were sent in 2006, one year prior to Johnson’s first trial, which ended in a hung jury, date stamped by DAO intake, and placed in the trial

file. The letters were ultimately found in 2022 during file review conducted as part of PCRA proceedings. When investigating whether retrial was possible, the undersigned spoke to and/or emailed trial defense attorney Nino Tinari, Lynn Abraham, and Carlos Vega. Based upon those communications, the District Attorney has determined that retrial is not possible because retrial is barred by Pennsylvania's Double Jeopardy clause due to gross prosecutorial misconduct.¹ Accordingly, the Commonwealth moves to *nolle prosequere* the charges and in support thereof submits the following:

1. Defendant, William Johnson, was charged with the 2005 murder of off-duty Police Officer Terrence Flomo.
2. At Johnson's 2007 trial, Johnson was represented by Nino Tinari. Carlos Vega was the trial prosecutor. Two women testified at the trial: Nora Williams and Brenda Bowens. There was no physical evidence connecting Johnson or his codefendant Mumim Slaughter to the crime, so the case rose or fell on the two women's testimony. The narrative presented at trial was that off-duty Officer Flomo was attempting to solicit Brenda Bowens immediately prior to his being shot by two men. At this trial, the jury acquitted both Johnson and Slaughter of first-degree murder. The jury found Slaughter guilty of third-degree murder and hung as to Johnson.

¹ The District Attorney also moves to *nolle prosequere* the charges because, in his discretion, the Commonwealth will not re-prosecute this case due to the quality of the evidence available to our office at any re-trial.

3. After Slaughter was convicted, he sought a deal for a more favorable sentence in exchange for his testimony against Johnson.
4. In 2009, Johnson was tried again. The Pennsylvania Superior Court set forth the facts presented to the second jury as follows:

On August 26, 2005, shortly after 2:00 a.m., Philadelphia Police Officer Vincent LaBrice received a radio call directing him to go to 20th Street and Cecil B. Moore Avenue to investigate a report of a shooting. Upon arrival in that general area, the officer observed a car resting against a telephone pole located at 20th and Turner Streets. Inside the car, he saw a male slumped over the steering wheel. Further investigation revealed that the male had been shot and though still alive, he was unresponsive. Another officer soon arrived and assisted Office LaBrice in removing the male from the car. Officer LaBrice then discovered that the male was an off-duty police officer who was later identified as Terrence Flomo. An ambulance arrived shortly thereafter and took Mr. Flomo to a nearby hospital where he was pronounced dead.

An autopsy performed on Mr. Flomo's body revealed that he died as a result of having suffered three gunshot wounds that caused damage to his right arm, liver, lungs, and heart. The manner of death was homicide.

Two individuals witnessed the shooting, Brenda Bowens and Nora Williams, two prostitutes who were working in the area that night. According to Ms. Bowens, Mr. Flomo drove up and called out to her. Ms. Bowens, who had just finished with a customer and was addicted to crack cocaine at the time, waved him off because she was on her way to a crack house to smoke crack she had just purchased with the money she just earned. Prior to going to the crack house, Ms. Bowens saw Johnson and Mr. Mumin Slaughter, both of whom she knew for some time and from whom she often purchased drugs, and told them that Mr. Flomo was trying to pick her up. Both men immediately began walking in the direction where Ms. Bowens had seen Mr. Flomo.

When Ms. Bowens arrived at the crack house, she looked back at Mr. Flomo's vehicle and saw Slaughter and Johnson standing next to the car; Johnson was on the passenger side and Slaughter by its driver's side window. Ms. Bowens next saw several flashes emanating from inside the car and heard gunshots. She immediately began banging on the door of the crack house begging to be let inside. While doing so, she heard gunshot.

Ms. Bowens was eventually interviewed by the police but denied knowing anything about the incident. On September 8, 2005, however, Ms. Bowens agreed

to a second interview after being advised by family members that she had to go to the authorities because her life was in danger. During the interview, Ms. Bowens implicated Johnson and Slaughter in the crime and identified photographs depicting the two men.

Just prior to the shooting, Ms. Williams was with a customer when she saw Ms. Bowens argue with a man in a car after which she walked up to Johnson and Slaughter and spoke to them for about a minute before walking away. The driver of the vehicle also left.

Shortly thereafter, Ms. Williams saw the car driven by the man who had been arguing with Ms. Bowens return. When it did so, Johnson and Slaughter, both of whom were carrying guns, ran up to the vehicle. Johnson went to the passenger side of the vehicle and Slaughter to the driver's side. Ms. Williams then heard the sound of gunfire coming from inside the car. When it stopped, both men fled.

Ms. Williams, like Ms. Bowens, initially told police that she had no information about the shooting. She, however, was interviewed a second time and identified Johnson and Slaughter as the individuals who shot Mr. Flomo.

In addition to Ms. Bowens and Ms. Williams, the Commonwealth called Slaughter to testify. Slaughter, who initially agreed to testify in exchange for a reduced sentence, refused to testify upon taking the witness stand. As a consequence, his statement, which he adopted during an in camera hearing, was read to the jury. In that statement, Slaughter stated that he and Johnson were selling drugs when Brenda Bowens walked up and complained about a guy in a green car. Soon thereafter, when the same car stopped nearby, Johnson ran up to the car and began shooting at the driver through the passenger window.

Other testimony included evidence that Johnson had ties to the area where the killing occurred and that following the killing, he and Slaughter abandoned the neighborhood.

Commonwealth v. Johnson, No. 3675 EDA 2009, at 2–4 (Pa. Super. Apr. 1, 2011) (cleaned up).

5. At the second trial, Johnson was again represented by Nino Tinari and the Commonwealth was again represented by Carlos Vega. Nora Williams and Brenda Bowens again testified. However, after initially having provided a statement implicating Johnson, codefendant Slaughter refused to testify, asserting that his statement was false and given only to induce Johnson to

- plead guilty. Nevertheless, the trial court (over defense objection) permitted the prosecution to introduce Slaughter's statement. Defense counsel had no opportunity to cross-examine Slaughter regarding the statement.
6. Every court to hear this issue on appeal (state and federal) has agreed that the introduction of Slaughter's statement violated the Confrontation Clause. But every court also found this Confrontation Clause violation harmless in light of the "unwavering" identifications of Williams and Bowens. *See Johnson v. Lamas*, 850 F.3d 119, 134 (3d Cir. 2017).
 7. In 2020, Johnson filed a PCRA petition raising newly-discovered evidence claims, including a 2020 recantation by Bowens that cited police coercion as the reason she implicated Johnson.
 8. In 2022, Johnson's counsel engaged in open file review. During that review, two letters were found in the file that Brenda Bowens had sent to the District Attorney's Office in February 2006, nearly a year before Johnson's first trial. See Exhibit A, Bowens Recantation Letters. The letters were stamped with the DAO intake date stamp "Received March 08 2006 DISTRICT ATTORNEYS OFFICE." In the letter to Carlos Vega, she also attached the letter she sent to Lynn Abraham. *Id.* In the letter to Lynn Abraham, Ms. Bowens says that Detective Thomas Augustine and Detective Richard "told [her] what to say." She also included details such as the following: "On November 18, 2005 DA

Carlos Vega told me he was going to help me get into a drug program, new teeth and money in my pocket. I may be a former crack addict, have no teeth and HIV but I'm a person with a conscience and I am also a human being." She said she was "threatened and forced" into the statement and she said, "I hope this would open an investigation into the Homicide Unit and the District Attorney Office." *Id.* When Bowens sent the letters, she was incarcerated at Riverside Correctional Facility.

9. Based upon the discovery of these letters, and other impeachment material in the file relevant to Nora Williams,² Johnson filed a motion to reopen his habeas proceedings in federal court. In response, the Commonwealth admitted that Bowens's 2006 letters were relevant to the federal court's determination of the effect of the Confrontation Clause violation since the letters showed that Bowens's account was not "unwavering" as the Commonwealth had previously argued before the federal court.
10. On March 13, 2023, the federal court issued an order granting Johnson a new trial. The court agreed that the Commonwealth "concealed from this Court and the Third Circuit critical evidence on the Confrontation Clause violation, in

² The DAO file also contained evidence that the Commonwealth provided Williams with previously undisclosed financial assistance and that she had been previously diagnosed with a significant psychiatric disorder, had been hospitalized for her mental health issues two months before the offense, and was suffering from active hallucinations at the time she reported witnessing the shooting.

particular evidence that was essential to a fair determination of the prejudice caused by this violation,” and found that the DAO’s “misrepresentations...present extraordinary circumstances to undermine the integrity of this Court’s proceedings and raised a significant risk of injustice.”

Exhibit B, Habeas Order March 13, 2023, *Johnson v. Lamas*.

11. The Commonwealth undertook an investigation to determine whether re-trial was possible, both in terms of the quality of the evidence available for re-prosecution as well as whether re-prosecution would be permitted by the Pennsylvania Constitution’s Double Jeopardy Clause.
12. To that end, the undersigned communicated with trial attorney Nino Tinari, former DA Lynn Abraham, and Carlos Vega.
13. Nino Tinari affirmed in an email that he had no recollection of receiving Brenda Bowens’s letters in discovery. They were never used at trial.
14. The undersigned called and emailed Mr. Vega. Mr. Vega indicated by email that he did remember the case but did not otherwise respond to whether he disclosed Brenda Bowens’s letters to defense counsel. He stated that he wished to inspect the DAO file in the matter. DAO agreed that he could inspect the file as long as integrity of the file was maintained by a contemporaneous video recording of his review of the file. Mr. Vega has not come in to review the file.

15. The undersigned also recently spoke to Lynn Abraham. On that call, Ms. Abraham stated that because the letters bore the DAO date stamp, she definitely read them because she read every letter sent to her. She said she had no specific memory of this particular letter, however. She said that she would have forwarded a letter like this to the head of the homicide unit, who she believed at that time was ADA Charles Gallagher. Ms. Abraham said that she believed that Bowens was lying in the letter. In response to a question of whether the letter was disclosed to defense counsel prior to trial, her “guess” was that Carlos Vega saw the letter and also thought it was “bullshit.” But she said she did not know what was done with the letter because once she forwarded the letter on, she did not “interfere” with cases.
16. The Commonwealth concludes that Johnson’s conviction lacks integrity due to the withholding of Brenda Bowens’s letters to Lynn Abraham and Carlos Vega. Moreover, the Commonwealth no longer credits Bowens’s statement to police based upon her current recantation of that statement and the evidence that she had recanted that statement in letters to Lynn Abraham and Carlos Vega prior to trial.
17. Moreover, this egregious *Brady* violation would likely prevent re-prosecution under *Commonwealth v. Jay Smith*, 615 A.2d 321 (Pa. 1992) (intentional suppression of exculpatory evidence constitutes prosecutorial misconduct that

would bar retrial under Pennsylvania's Double Jeopardy Clause) and *Commonwealth v. Johnson*, 231 A.3d 807 (Pa. 2020) (reckless suppression of exculpatory evidence can bar retrial under Pennsylvania's Double Jeopardy Clause).

18. *Brady* requires a District Attorney to disclose evidence that is not only exculpatory but impeaching. *United States v. Bagley*, 473 U.S. 667 (1985). A letter in which a woman claims detectives coerced her inculpatory police statement is plainly impeaching of that police statement. Therefore, under black letter law, the District Attorney's Office was required to disclose this letter. Moreover, Pennsylvania Rule of Professional Conduct 3.8, Special Responsibilities of a Prosecutor, requires prosecutors to disclose "all evidence or information known to the prosecutor that tends to negate the guilt of the accused...except when the prosecutor is relieved of this responsibility by a protective order or the tribunal." ABA Standards for the Prosecution Function are similar. Standard 3-5.4 (a, c) requires the disclosure of "all information in the possession of the prosecution or its agents that tends to negate the guilt of the accused," and this duty applies "*regardless of whether the prosecutor believes it is likely to change the result of the proceeding.*" (emphasis added).
19. The letter was date-stamped by the DAO one year before Johnson's first trial, and it was discovered in the trial file. It was never disclosed to trial counsel

Nino Tinari. Lynn Abraham has admitted to reading the letter. While Carlos Vega has not commented on what he did with the letter, Lynn Abraham stated that she guessed he did not hand it over because he would have thought it was “bullshit.” The suggestion that a prosecutor is relieved of their *Brady* obligation if they believe an exculpatory statement is untruthful is a startling admission from a District Attorney who served for 19 years. Regardless of a District Attorney’s evaluation of evidence, if evidence is impeaching, it must be turned over and that was not done here.

20. The Commonwealth therefore respectfully submits that, in light of the record described above, that this Court enter a *nolle prosequi* pursuant to Pa. R. Crim. P. 585(a).

Respectfully Submitted,

s/ Katherine Ernst

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LAWRENCE KRASNER

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Date: June 7, 2023