

IN THE COURT OF COMMON PLEAS
FOR THE COMMONWEALTH OF PENNSYLVANIA
FIRST JUDICIAL DISTRICT

COMMONWEALTH,

Respondent,)

vs...

Case No. 8201-1357-59

MUNIA ABU-JAMAL,)

Petitioner.)

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PETITION FOR HABEAS CORPUS RELIEF PURSUANT TO ARTICLE I,
SECTION 14 OF THE PENNSYLVANIA CONSTITUTION, AND FOR
STATUTORY POST-CONVICTION RELIEF UNDER THE POST CONVICTION
RELIEF ACT, 42 Pa. C.S. § 9541 *et seq.*

ROBERT R. BRYAN, Esq.
2088 Union Street, Suite 4
San Francisco, California 94123-4124
Telephone: (415) 292-2400
Lead counsel for Petitioner

STEVEN W. HAWKINS, Esq.
120 Wooster Street, Second Floor
New York, New York 10012
Telephone: (212) 965-0400
Facsimile: (212) 966.9606

JUDITH L. RITTER, Esq.
Pennsylvania Attorney ID# 73429
Widener University School of Law
P.O. Box 7474
4601 Concord Pike
Wilmington, Delaware 19801
Telephone: (302) 477-2121
Local counsel for Petitioner

JILL CULBERT, Esq.
Law Offices of Robert R. Bryan
2088 Union Street, Suite 4
San Francisco, California 94123-4117
Telephone: (415) 292-2400
Associate counsel for Petitioner

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CONVICTION RELIEF ACT, 42 Pa. C.S. § 9541 *et seq.***

Petitioner MUMIA ABU-JAMAL, through the undersigned counsel and upon the exhibits submitted herewith, moves for post-conviction relief pursuant to Article I, Section 14 of the Pennsylvania Constitution and the Post-Conviction Relief Act, 42 Pa.C.S. § 9541, *et seq.*, seeking vacation of his first degree murder and related conviction.

PROCEDURAL HISTORY

1. Mumia Abu-Jamal, Petitioner, is on death row in the State Correctional Institution at Greene.
2. Petitioner was arrested on December 9, 1981 for the killing of Daniel Faulkner, a police officer. He was charged in Information #1357 and 1358 with first degree murder and possession of an instrument of a crime.
3. Petitioner pleaded not guilty and was tried by a jury, the Honorable Albert F.

Sabo, presiding. Following the trial, he was sentenced to death for the alleged murder on May 23, 1983.

4. Petitioner's direct appeal was denied by the Pennsylvania Supreme Court. *Commonwealth v. Abu-Jamal*, 521 Pa. 188, 555 A.2d 846 (1989), *reh'g den'd*, 524 Pa 106, 569 A.2d 915 (1990). A petition for writ of *certiorari* was denied by the United States Supreme Court. *Abu-Jamal v Pennsylvania*, 498 US 881 (1990), *reh g den'd*, 498 US 993 (1990), 501 US 1214 (1991).

5. On June 1, 1995, Governor Thomas Ridge signed a warrant for Petitioner's execution, scheduling it for August 17, 1995.¹

6. A petition under the Pennsylvania Post-Conviction Relief Act was filed in this Court on June 5, 1995. The matter was referred to the original trial judge, Hon. Albert Sabo. He denied Petitioner's motion for his recusal even though his bias was in issue.

7. On July 14, 1995, the court denied Petitioner's motion for discovery, summarily quashed over two dozen subpoenas, and declined to rule on his motion for stay of execution on the bizarre ground that the evidentiary hearing could conceivably be concluded in sufficient time to carry out the execution on the designated date. Judge Sabo rebuffed all efforts by Petitioner to secure more time to prepare for the evidentiary hearing, which had been set for July 12, 1995. Petitioner filed an emergency interlocutory petition for relief with the Pennsylvania Supreme Court, arguing that the judge had abused his discretion in imposing an unrealistic hearing sched-

1. State authorities, including the Office of the Governor were aware of Petitioner's intention of filing June 5, 1995. The state authorities were aware of Petitioner's intention to file a petition for collateral relief because prison officials routinely intercepted his mail, including privileged correspondence to and from his counsel that included highly confidential discussions concerning litigation strategy and counsel's evaluation of the possible claims that could be raised in the collateral proceedings. Consequently Petitioner filed a civil rights action based upon this intrusion into his legal correspondence with the United States District Court for the Western District of Pennsylvania. It concluded that this interception of the privileged communications "actually injured" him and violated his Sixth and Fourteenth Amendment rights. *See Jamal v. Price, et al.*, No. 95-618, 1996 U.S. Dist. LEXIS 8570 (W.D. Pa. June 6, 1996).

ule. The Pennsylvania Supreme Court agreed and provided Petitioner modest relief, setting the hearing for July 26, 1995.

8. Following an evidentiary hearing held July 26 - August 15, 1995, and related proceedings, the petition was denied on September 15, 1996. *Pennsylvania v Cook*, 30 Phila 1, 1995 Phila Cty Rptr LEXIS 38 (1995). Petitioner appealed the denial of post-conviction relief to the Pennsylvania Supreme Court and presented a motion to recuse Justice Castille on grounds that he was the Philadelphia District Attorney during the pendency of Petitioner's direct appeal from his judgment of conviction and sentence.

9. Thereafter, a second motion for remand was submitted to take testimony from Pamela Jenkins, a newly discovered witness, for additional discovery including the production of the police and prosecution files in their entirety, and to request the matter be re-assigned to a different judge. A third remand motion followed for the purpose of supplementing Petitioner's *Batson* claim with evidence concerning a training video which exposed the Philadelphia District Attorney's policy and practice of systematically striking African-American venire persons.

10. On May 30, 1997, the second remand motion was granted as to the taking of testimony from Pamela Jenkins and otherwise denied. The third remand motion was denied. On August 1, 1998, a fourth remand motion was submitted to supplement the record with evidence that his death sentence should be vacated due to racial and geographical disparities; and that the prosecution impermissibly used peremptory strikes to excuse qualified jurors on account of race.

11. On October 29, 1998, the Pennsylvania Supreme Court denied the fourth remand motion; denied the motion for recusal of Justice Castille; and affirmed the denial of the petition for post-conviction relief. *Commonwealth v Mumia Abu-Jamal* (Pa 1998) 720 A.2d 79. The Court denied Petitioner's application for re-argument on November 25, 1998. A Petition for Certiorari to the Supreme Court of the United States was denied on October 4, 1999.

12. A habeas corpus petition was filed on behalf of Petitioner in the United States

District Court for the Eastern District of Pennsylvania on October 15, 1999, in *Abu-Jamal v Horn, et al*, Case No. 99-5089. On December 18, 2001 the death sentence was overturned, but the conviction was affirmed. *Abu-Jamal v. Horn*, F. Supp.2d. , 2001 WL 1609690 (E.D. Pa. 2001). Thereafter, the Commonwealth appealed the sentence reversal and Petitioner cross-appealed the affirmance of the conviction. *Abu-Jamal v Horn*, Case No. 01-9014 & 02-9001. On June 11, 2002, the United States Court of Appeals stayed the federal appeal and cross-appeal *sua sponte*, pending ongoing state litigation.

13. On July 3, 2001, Petitioner filed in the Court of Common Pleas a petition for post-conviction relief. The Court denied the petition without a hearing on December 11, 2001. On February 20, 2002, Supplemental Opinion was issued

14. The decision was appealed. Notice of Appeal, Jan. 9, 2002. The Pennsylvania Supreme Court affirmed the lower court's denial of relief on October 8, 2003. *Commonwealth v. Abu-Jamal*, A.2d , Pa. Sup. Ct. No. 364 CAP (Oct. 8, 2003).

ENTITLEMENT TO RELIEF

15. The convictions and sentence rendered against Petitioner violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article One, Section 9 of the Pennsylvania Constitution.

16. Petitioner is *also* entitled to relief under Article I, Section 14 of the Pennsylvania Constitution, establishing the state constitutional right to habeas corpus, and one or more of the following statutory grounds for relief enumerated in the Pennsylvania Post-Conviction Relief Act, 42 Pa.C.S. § 9541, *et seq*:

- a. That his conviction and sentence resulted from "a violation of the Constitution of Pennsylvania or laws of this Commonwealth or the Constitution of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa. C.S. § 9543(a)(2)(i).

- b. That his conviction and sentence resulted from "ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa. C.S. § 9543(a)(2)(ii).
- c. The improper obstruction by government officials of Petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court. 42 Pa. C.S. § 9543(a)(2)(iv).
- d. That his conviction and sentence resulted from "a violation of the provisions of the Constitution, laws or treaties of the United States which would require the granting of Federal habeas corpus relief to a State prisoner." 42 Pa. C.S. § 9543(a)(2)(v).²
- e. That his conviction and sentence resulted from the "unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." 42 Pa. C.S. § 9543(a)(2)(vi).
- f. That his conviction and sentence resulted from a violation of the Sixth and Fourteenth Amendments to the United States Constitution, the corresponding provisions of the Pennsylvania Constitution (Article I, Section 9),³ and Article I, Section 14 of the Pennsylvania Constitution.

2. Petitioner seeks relief under *both* 42 Pa. C.S. § 9543(a)(2)(ii) and 42 Pa. C.S. § 9543(a)(2)(v), as well as under Article I, Section 14 of the Pennsylvania Constitution. Petitioner contends that the 1995 amendments purporting to limit the grounds for relief available under the Post-Conviction Relief Act are invalid because they unconstitutionally suspend the state constitutional right to habeas corpus relief for those claims (Art. 1, § 14) and violate Petitioner's state constitutional right of access to open courts for review of those claims (Art. 1, § 11), and his right to due process and effective assistance of counsel (Art. 1, § 9). Alternatively, if the amendments simply limit the relief available under the PCRA, in doing so they must leave open alternative mechanisms to pursue the opportunity for post-conviction relief guaranteed by Article I, Section 14, such as this Petition for habeas corpus relief under Article I, Section 14. Therefore, in the event that this court determines that PCRA relief is no longer available for claims cognizable under 42 Pa. C.S. § 9543(a)(2)(v), Petitioner also specifically seeks relief under Article I, Section 14, which guarantees his state constitutional right to habeas corpus.

3. For each constitutional claim raised, Petitioner's claims must be analyzed under both the United States and Pennsylvania constitutions. *See, e.g., Commonwealth v. Mason*, 535 Pa. 560, 637 A.2d 251 (1993); *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (1991); *See generally* Leonard Sosnov, *Criminal Procedure Rights Under The Pennsylvania Constitution: Examining The Present And Exploring The Future*, 3 WIDENER J. OF PUB. L. 217, 280-82 (1993). Every time the Pennsylvania Constitution's provisions are implicated, "it is both important and necessary that we undertake an independent analysis" of its protections. *Commonwealth v. Edmunds*, 526 Pa. at 389-90.

CLAIMS FOR RELIEF

CLAIM ONE: THE STATE MANIPULATED A PURPORTED EYEWITNESS TO FALSELY IDENTIFY PETITIONER AS THE SHOOTER, IN VIOLATION OF HIS RIGHTS UNDER THE FIFTH, SIXTH EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

17. Petitioner was deprived of his right to a fair and reliable determination of guilt and penalty, as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, because the State's most important identification witness, Cynthia White, was coaxed and coerced into providing false testimony implicating Petitioner.²

18. Petitioner incorporates herein by reference Claims One and Three of the Petition for Post-Conviction Relief filed herein on June 5, 1995 and all other related pleadings filed in this matter.

19. All other allegations, facts and claims contained in this petition, its attachments and other submissions including the petition filed June 5, 1995, are incorporated as if fully set forth herein.

20. The principal prosecution witness was a prostitute named Cynthia White. Her testimony was critical to the state because she was the only witness who claimed actually to have seen Petitioner shoot the officer.

21. Evidence presented at Petitioner's PCRA hearing revealed White's testimony was fabricated. She was under police control throughout the pre-trial period and was a police informant.

22. White was plainly susceptible to police pressure. During the trial, she was serving an 18-month sentence in Massachusetts. She had 38 previous arrests for prostitution in Philadelphia and had three open cases in Philadelphia.

23. In the days after the shooting, she was arrested at least twice for prostitution. Her

picture was posted in the 6th District with instructions for arresting officers to "Contact Homicide."

24. Each time police picked White up, she revised her story. Without explanation, bench warrants against her were not prosecuted.

25. At the 1982 trial, another prostitute, Veronica Jones, testified that police revealed that White was given favors for providing false testimony. The trial court improperly struck this testimony and barred further inquiry into White's relationship with the police and the incentives given to her in order to secure favorable testimony.

26. In 1996, at a remand hearing, Jones again described conversations in which police told her that White was receiving favors in return for her testimony.

27. This information about White was never disclosed to the defense. On the contrary, the prosecution affirmatively misrepresented that there were no such promises or inducements.

28. An investigator retained by the defense for a short period (until the meager funds were exhausted) was never able to interview White because two plainclothes police officers kept a watch over her.

29. According to a retired Center City police officer, Lawrence Boston, who testified at the PCRA hearing, White was receiving special favors after the shooting.

30. According to Boston, who knew White through walking a beat on 13th Street, "the word was out in the street" that White was living in Pine Hill, New Jersey, in a condominium near a golf course. Boston also confirmed that police commonly used prostitutes as sources of information. None of this information, which was indisputably known to police before trial, was ever disclosed to the defense⁴

4. This kind of police manipulation of prostitutes as informants was common in Philadelphia's Center City in the early 1980's, a time when Center City police were taking

31. Law enforcement's favors to White continued through at least 1987.

32. Contrary to the prosecutor's representations at trial, White was not prosecuted on her three pending prostitution charges.

33. Police also provided unusual favors to White when she faced serious felony charges in 1987.

- a. At her bail hearing, a Homicide detective intervened to advise the judge of White's role in Petitioner's⁵ case. Notwithstanding the serious charges, and her record of "seventeen failures to appear" and "page after page" of arrests, the bail judge, although reluctant, released White on her own recognizance as a result of police intervention on her behalf.
- b. After White was released on her own recognizance, she never again appeared in the Philadelphia court system, and police made no attempt to apprehend her.
- c. The special treatment of White, which extended into the late 1980's, demonstrates either that White had been offered undisclosed favors and special treatment, or that police feared that, absent such continued inducements,

hundreds of thousands of dollars in bribes from prostitutes, pimps, and club owners. A federal probe of Center City police corruption began in mid-1981, and became public knowledge in a series of indictments that began in 1983. The probe led to over twenty convictions of police officers, including the Inspector who ran the Central Division in 1981-82, and the Deputy Commissioner for the whole department. The head of Homicide was named as an unindicted co-conspirator because of his relations with Center City prostitutes. The investigation revealed that police virtually controlled Center City prostitution through extortion, and that corrupt police engaged in sex with the Center City prostitutes under their control. White was arrested six times in 1980 and 1981 by 6th District police officers Joseph Goiffre and Richard Herron. These two officers were later convicted of extorting payoffs from 6th District street prostitutes.

5. Det. Culbreth, now retired, appeared on White's behalf at the bail hearing, causing the court to allow White to sign her own bond. Culbreth, who had served as Cynthia White's police escort at the 1982 trial, told the bail judge that White was a Commonwealth witness in a "high profile" case (i.e., this one). Culbreth appeared at the bail hearing because White had called him at the Homicide Unit and requested his help. "[S]he called me because *she knew I would do it.*"

White would recant her false testimony.

34. An affidavit obtained from Yvette Williams, executed January 28, 2002, establishes that the prosecution's most important witness, Cynthia White, lied at Petitioner's trial and falsely identified him as the person who shot Daniel Faulkner. In fact, she did not see the shooting. Ms. Williams' affidavit also establishes that it was the police who caused Ms. White to falsely testify through the use of a combination of threats and bribery. That included supplying illegal drugs and drug paraphernalia to her in jail for the purpose of inducing that testimony.

35. Cynthia White was in jail with Yvette Williams in December of 1981, after Officer Faulkner was shot. She confided to Ms. Williams that her testimony against Petitioner was false and coerced and induced by the police. She explained:

5. Our cells were directly across from each other. Sometimes the inmates would use me as a "runner", passing contraband between inmates in the hole and inmates in population, and I would stop and talk with Lucky when I went to her cell. I had been involved in violent crime and was interested in what prostitution was all about so I was asking Lucky about it, considering it as an occupation. She was nervous and frightened and glad to have someone to talk to. She was always crying and sad. She told me she was scared for her life. I asked her, "Scared of who?" She stated, "The guards and vice."

6. When Lucky told me she didn't see who shot Officer Faulkner, I asked her why she was "lying on that man" (Mumia Abu-Jamal). She told me it was because for the police and vice threatened her life. Additionally, the police were giving her money for tricks. "The way she talked, we were talking "G's" (\$1,000.00). She also said she was terrified of what the police would do to her if she didn't say that Mumia shot Officer Faulkner. According to Lucky, the police told her they would consolidate all her cases and send her "up" (Muncy), a women's prison, for a long time if she didn't testify to what they told her to say. Lucky told me she had a lot of open cases and out-of-state warrants and was scared of going to Muncy. She was scared that her pimp "would get pissed off at all the money he was losing when she was locked up, and off the street. She was afraid that when she got out he would beat her up or kill her.

7. Lucky was worried tape police would kill leer if he say what they wanted. She was scared of what the MOVE people would do to her after she testified against Mumia; but MOVE never threatened Lucky while incarcerated. She was scared when she told me all of this plus she was crying and shaking. Whenever she talked about testifying against Mumia Abu-Jamal, and how the police were making her lie, she was nervous and very excited and I could tell how scared she was from the way she was talking and crying.

8. Lucky told me that what really happened that night was that she was "on the stroll" (looking for and serving customers) in the area of 13" and Locust when Officer Faulkner got shot, but she definitely did not see who did it. She also told me that she had a drug habit and was high on drugs when it happened. She tried to run away after the shooting, but the cops grabbed her and wouldn't let her go. They took her in the car first and told her that she saw Mumia shoot Officer Faulkner.

Declaration of Yvette Williams, Jan. 28, 2002.

36. Yvette Williams' declaration does not merely provide direct contradiction of the prosecution's key witness at trial, but it also materially undermines the integrity of the entire original investigation and case against Petitioner. The fact that the prosecution witness testified falsely as a result of police inducement taints all of the evidence upon which the Commonwealth relied at the original trial. The subornation of perjury from Cynthia White results in the inescapable conclusion that the original investigating officers caused other witnesses to lie, exculpatory and impeachment evidence was suppressed, other evidence was fabricated, and at least some of the police officers also committed perjury.

37. The incredulous nature of White's testimony is further evidenced by the fact that none of the other witnesses who claimed to have seen some of the events in question recalled seeing her in the vicinity of the shooting. In fact, two witnesses, William Singletary and Dessie Hightower, recalled seeing her at a different location. Moreover, Mr. Singletary recalled White asking him, after the police arrived: "What happened?"

38. Yvette Williams' declaration provides undeniable evidence of Cynthia White's fabrication and the reasons for it. In light of this new information, it is established that the conviction of Petitioner was obtained through the knowing use of perjured testimony. If the fact of and the reasons for which Cynthia White falsely identified Petitioner as the shooter of Officer Faulkner when she had not even seen the shooting were known at the time of the trial, and if Petitioner had been represented by reasonably competent counsel, there can be no doubt that he

would not have been convicted.

39. The information provided by Yvette Williams reveals that Cynthia White was induced and coerced by police to testify falsely against Petitioner even though she did not even witness the shooting.

40. Substantial evidence strongly corroborates the statement of Ms. Williams.

41. If convicted and sentenced for all of her outstanding charges and for contempt, Cynthia White was potentially facing a substantial period of imprisonment.⁶ Moreover, the police were in a position to make it impossible and possibly dangerous for her to continue to work the streets or to continue to even live in Philadelphia.⁷

42. Cynthia White also possessed personal knowledge of the police corruption which was rife in Philadelphia in the early 1980's. Therefore, she must have been fully aware of the devastating extent to which police officers in Philadelphia could complicate and potentially endanger her life.

- a. In 1980 and 1981, Cynthia White was arrested numerous times by 6th District Police Officers Joseph Goiffre and Richard Herron.
- b. These two officers were later charged with extorting payoffs for protection of prostitution and after-hours liquor sales. Herron was convicted on all

6. At the time of trial, Cynthia White had three outstanding cases pending against her in Pennsylvania.

7. Cynthia White herself confirms that William Singletary was present at the scene at the time of the shooting, even though she never identified him by name. She has consistently said that there was a man whom she never identified but whom she said that she knew who was with her on this street corner at this time. He had arrived about 5 to 10 minutes earlier. 6/21/82 4.140. According to White, this unidentified man also spoke to police officers and a highway police officer at the scene after the shooting. 6/21/82; 4.142. She also claims that, although they had been speaking earlier, they did not speak during this incident and he was looking the other way. 6/21/82; 4.144 - 4.146. (It is difficult to conceive of how she could have known that this man was looking the other way if she was watching what was happening. This man was William Singletary who knew her. He had spoken to White for a couple of seconds shortly before the shooting occurred. 8/11/95; 300, He also talked with police officers immediately after the incident, including a Highways Patrol Officer whom he knew, Vernon Jones. 8/11/95; 237-239.

counts. Goiffre was only convicted on one count concerning numbers and video machines. *U.S. v. Herron & Goiffre*, CR 85-00052, US Dist. Ct, ED Pa.

43. Moreover, according to Pamela Jenkins, Cynthia White was a police informer. 6/26/97; 47.

44. Simply as a working prostitute, it is highly unlikely that White was a willing witness in this case at all. As Veronica Jones observed at trial, she left the scene when the police arrived, because "it was too many police cars and hookers do not stand in the area where there is too many police cars."⁸ During the prior year, she had given a string of false names and addresses to the police when she was arrested on prostitution charges. 6/21/82; 4.77; 4.80; 4.116-4.13 1.

45. Most significantly, White did not even give the police her proper address when she was allegedly interviewed immediately after the shooting. 6/22/81; 5.41. Therefore, the only time when the police could contact her was upon her arrest in relation to another matter. In the days after the shooting, she was arrested at least twice for prostitution. Her picture was posted in the 6th District with instructions for arresting officers to "Contact Homicide". If White really was a voluntary and potentially the most important witness in this case, it is inexplicable that she gave a false address to police in December 1981.

46. A substantial body of evidence also demonstrates that White and those closely associated to her received special favors after this shooting.

47. In May 1982, the District Attorney allowed Robert "Prince" Small to sign his own

8. Donald Hersing states that he personally used to make payments to the police to speed up the booking process. He explains that while the owners of brothels used to provide cash protection payments, the individual women were expected not only to have sex with police officers, but to provide information about individuals. If the individual girls did not pay up, they would be run into jail. "These women had to pay and when the police needed a human sacrifice for a particular club, they got a human sacrifice." Affidavit of Donald Hersing, May 10, 1999, ¶ 11.

bail on a theft charge with the assurance that he would later appear in court. This was purportedly for unexplained and, indeed, inexplicable security reasons. Small was the man with whom Cynthia White was living in December 1981. 6/22/82; 5.78.

48. In 1987 when White faced serious felony charges, Detective Culbreth, a homicide investigator, appeared at the bail hearing, because Cynthia White had called him at the Homicide Unit and requested his assistance. Detective Culbreth, who was one of the officers who took White's first statement and had served as her police escort at Petitioner's trial, told the bail judge that she White was a very important witness in a high profile case. As a result, the court allowed Cynthia White to sign her own bond. 8/30/97; 99; 101.

49. There is also considerable evidence demonstrating that other witnesses and potential witnesses in this case were subjected to unlawful pressure and intimidation to persuade them to alter their evidence to suit the prosecution case.

50. Veronica Jones, another prostitute and witness in this case, testified regarding police attempts to induce and manipulate the testimony of potential witnesses.

a. She testified that the officers who interviewed her in 1982 used threats similar to those described by Yvette Williams, in order to persuade her to alter her account, which exculpated the Petitioner, to one that directly incriminated him.

b. She further testified regarding the extent to which, at least at the original trial, she succumbed to these unlawful pressures.

51. In her original witness statement, Veronica Jones stated:

As I was walking away from the High Speed line entrance I heard firing. I heard three shots. I looked down Locust towards Johnny Dee's and I saw a policeman fall down. After I saw the policeman fall, I saw two black guys walk across Locust and then they started jogging. The next thing I saw was a wagon coming. There was one other black guy standing by the entrance of the Speed line by Johnny Dee's.

6/29/82; 106.

52. At trial, Jones denied that she had seen two men running away. 6/29/82; 99.

53. At the PCRA hearing, Veronica Jones testified that she had said that, contrary to the evidence which she had given at trial, she witnessed two people running away from the scene as she maintained in her original statement. 10/1/96; 21. She also explained the reasons she had not testified to this at the trial. She stated, before the original trial, she was in jail awaiting her own trial on certain weapons charges when she was visited by two detectives who told her that they could help her distinguish those charges if she helped them. 22. They wanted her to name Petitioner as the person who shot Police Officer Faulkner.

54. Veronica Jones also confirmed that, in January 1982, she was questioned by two other officers. She stated that they had not processed her in the normal way. Rather, they questioned her about this case and attempted to convince her to testify against Petitioner. 10/1/96; 29, 30, 31.

55. Veronica Jones maintained her account that she witnessed two men running away at the PCRA hearing even though she was told during the course of her cross-examination that she was going to be arrested under a bench warrant issued in New Jersey upon the completion of her testimony. 126-145.

56. At the PCRA hearing, another prostitute and police informant, Pamela Jenkins, also came forward to testify that, on the Saturday after the shooting, two police officers, a Tom Ryan and a Richard Ryan, tried to coerce her into giving a statement that she saw Petitioner shoot Police Officer Faulkner when she was not even present at the scene. 6/26/97; 39,42-44.

57. William Singletary was potentially a devastating witness to the prosecution. He was interviewed in the early hours of 9th December 1981, by an officer who identified himself as a Detective Green.

58. At the PCRA hearing, William Singletary testified that he told the interviewing

officer Police Officer Faulkner had been shot by a man wearing a long army overcoat, whom he identified as the passenger in the Volkswagen. He further stated, after the first shot, he ducked behind the barrier of the highspeed line. 8/11/95; 235. He then saw the Police Officer being shot in the face and then fall over backwards. 235. The Police Officer's assailant, who had dreadlocks, disposed of his gun and then started running. The guy who had been driving the Volkswagen yelled a name or something and started chasing this man. A cab driver asked him what was the sound which he heard. He told him that a police officer had been shot and that they needed to get him help right away. Then another man, Petitioner, came across the street. The Petitioner said that it was his brother's car. William Singletary told him a tall guy had shot the police officer and had then taken off running. Petitioner said "Oh, my god, we don't need this." Petitioner then went over to the police officer to see if there was anything which he could do. 236. Petitioner was shot. According to the witness, he was shot by the police officer's gun which was in his lap. 237. Later, after the police arrived, the witness observed the police assault Petitioner, drag him to the police wagon, and throw him inside. 238.

59. The officer who interviewed him destroyed his first and second statements on 9th December 1981 (8/11/95; 211) and, in his third statement, William Singletary wrote what Detective Green told him to write. 212.

- a. He did so because Detective Green threatened that otherwise, he would not be able to leave the police station, they would take him to the elevator and beat him up, and his business would be destroyed. 212.
- b. Shortly afterwards, he revealed to State Representative Alphonso the treatment he had received from the police officers. 214.
- c. Within a day or so, William Singletary was visited by representatives of the District Attorney's office and told that he was a witness. 216-217.
- d. A couple of days later, four police officers from a burglary detail visited

the gas station where he was the manager, busted the door and some plate glass, produced weapons, and told everyone there to get on the floor. 217-219. They stated to him that "this would give him something to remember." 219. The glass at the gas station was busted again on Christmas Eve 1981.

- e. In February 1982, William Singletary closed his business, because he could not afford "the glass and stuff, kept getting broken." 222-223. He left Philadelphia in late August 1982, because "I couldn't do no business ... because my tow truck was being stopped, drivers being harassed ... by the police." 224. William Singletary had no problems with the police before 9th December 1981. 224.

60. Similarly, Dessie Hightower, another potentially important defense witness was subjected to a polygraph test towards the end of a nearly six hour interview on 15 December 1981, after he had told detectives both on the night of the shooting and a week later, on 15 December 1981, that he had seen someone fleeing from the scene before the police officers arrived. 9. However, while he was undergoing the polygraph test, the police never asked him if he saw someone running away.⁹ The police also altered the tenor of his statement so that it suggested that he was unsure if it was man or a woman whom he had seen running away. Dessie Hightower had consistently maintained that "it was a black male, five-eleven or six foot."

61. Yvette Williams' affidavit explains the reasons for which Cynthia William's testimony was riddled with inconsistencies.

62. In her first witness statement on December 9, 1981, Cynthia White said specifically that there was no struggle between the police officer and either of the two men who she

9. No polygraph tests were ever carried out on Cynthia White or Robert Chobert, because the police had suborned perjured testimony from them.

saw. In her third witness statement dated 17th December 1981, Cynthia White said for the first time that she saw the driver of the Volkswagen hit the police officer. At trial, Cynthia White described William Cook hitting Police Officer Faulkner just once in the face before Police Officer Faulkner turned him round as if to handcuff him. Before he was able to do that, Cynthia White claims that the Petitioner had run out of the parking lot opposite, crossed the street, and shot Police Officer in the back, firing two shots. 6/21/82; 4.95 - 4.96.

63. Cynthia White has never explained why she suddenly turned to look at the parking lot in time to see Police Officer Faulkner's assailant allegedly run out of the parking lot, while she was watching Faulkner try to handcuff William Cook. 6/21/82; 4.98. Her account does not allow any time for the Petitioner to see what was happening, react and intervene as she claims he did. Moreover, Cynthia White further stated, when they were on the sidewalk, William Cook did not struggle after he hit Police Officer Faulkner in the face. 6/22/82; 5.105. Cynthia White was unable to explain how a photograph of William Cook taken that night shows that he had been injured behind his ear. 6/22/82; 5.15 *l*.

64. At trial, Cynthia White initially stated that Police Officer Faulkner's assailant shot him from the other side of the street. 6/21/82; 4.93. However, the forensic evidence clearly established that Police Officer Faulkner was shot at very close range, from a distance of about 12 inches. Later, in the course of her cross-examination-in-chief, Cynthia White said that Police Officer Faulkner's assailant was just a few feet behind him when he first shot him in the back. 6/21/82; 4.99.

65. In her first witness statement of December 9, 1981, Cynthia White stated that the person who shot the police officer "fired the gun at the Police Officer four or five times. The Police Officer fell to the ground." In her second statement dated 12th December 1981, in response to the question: "When he began to shoot, did he fire all at once or were the shots staggered?", Cynthia White answered: "It sound all at once. It sounded like firecrackers." By her third witness

statement, Cynthia White was saying: "He pointed the gun at the Police Officer and shot about one or two times. then the Officer fell and he went over and stood above him and shot three more times."

66. In her first statement dated 9th December 1981, Cynthia White specifically said "No" in answer to the question: "Did you see the Police Officer pull his gun?" By the time of her third statement, in answer to the question: "Did you see the Police Officer that was shot pull his gun out?", Cynthia White answered: "Not actually, but it looked as if he grabbed for something at his side." At trial, Cynthia White testified that she did not see Police Officer Faulkner shoot his assailant; she claimed his assailant was blocking her view. 6/21/82; 4.104. But she had already claimed that, when the Petitioner shot Police Office Faulkner as he lay on the ground, the Petitioner was standing over him and she demonstrated how she could she the Petitioner pointed his gun down, fired, lifted his gun, pointed it down and fired again, three times. 6/21/82; 4.104. If the Petitioner was blocking her view so that she could not see if Police Officer Faulkner shot the Petitioner, the Petitioner would have had his back to her.

67. At trial, Cynthia White testified that when other police officers arrived at the scene, they approached Petitioner, but" he was swinging his arms and kicking, and they were trying to get him under control to handcuff him." 6/21/82; 4. 109; 4.149. Petitioner had, of course, himself been shot at this stage. Cynthia White makes no mention of Police Officer Shoemaker kicking Jamal in the throat so that he fell on his back when he first arrived on the scene. In her statement to Internal Affairs of March 24, 1982, Cynthia White described this incident rather differently. In answer to the question: "After the shooting and the police arrived exactly what did you see?" Cynthia White said: "Jamal was sitting on the curb and the police wagon - that was the stakeout wagon came up. One of them got out; one stayed in. I guess he was calling on the radio. Another wagon came the other way and they seen a policeman laying there, and they started hitting on the guy". The next question was: "How many police hit him?" Cynthia White responded

"Must have been four or five." 6/21/82; 4 - 192. In her third statement of December 17, 1981, Cynthia White said" The rest of the cops came and went over to the guy sitting on the curb and hit him and then handcuffed him and two cops drug him to a wagon."

68. Towards the end of her first statement of December 9, 1981, it is recorded that, when Cynthia White was being taken to the bathroom by Detective William Thomas 744 at 5.25 am, she identified William Cook as the driver of the Volkswagen. Yet, when Cynthia White was asked to identify the driver of the Volkswagen during her statement dated 12th December 1981, all she was able to say was: "I believe that he was wearing blue jeans and a dark colored tam type hat. That's all that I can recall right now, but I would know him if I saw him again. By the time Cynthia White made her statement on December 17, 1981, she was able to say: "I bought my gloves from him (the driver of the Volkswagen) at 16th and Chestnut. He sells scarves and all at a stand, and I have seen him drive around there before in the Volkswagen."

69. Perhaps most significant, however, is the vital change in the account of the events that Cynthia White gave at William Cook's assault trial and the account which she testified to at the Petitioner's murder trial with regard to whether there was a passenger in William Cook's Volkswagen that night.

- a. At William Cook's assault trial, Cynthia White said that there was a passenger in William Cook's car that night and that he, too, like the driver of the car got out of the car after Police Officer Faulkner approached the car to talk to the driver.
- b. But, at the Petitioner's trial, Cynthia White made no reference to the passenger in the car and, in answer to the specific question from the Assistant District Attorney: "Was there anyone else there besides the defendant, the police officer who was on the ground and William Cook?" Cynthia White answered, "No." 6/21/82; 4.106.

c. This change in Cynthia White's testimony was vital to the prosecution's case. The case against the Petitioner was founded on the basis that only the Petitioner and William Cook were at the scene when Police Officer Faulkner was shot.

70. These inconsistencies in Cynthia White's various accounts of the events of December 9, 1981, can only be explained by the facts confirmed in Yvette Williams' affidavit that Cynthia White's statements and testimony inculcating Petitioner were the result of police coercion and inducement since she did not even witness the shooting.

71. If, at the time of the Petitioner's original trial, it had been known by the Defense and the jury that the police had suborned Cynthia White to commit perjury by falsely identifying Petitioner as the person who shot Police Officer Faulkner when she had not even seen the shooting, this would have cast a wholly different complexion on the case. In the hands of reasonably prepared and reasonably competent counsel, this evidence could and would have been used to devastating effect. If the Defense had used this evidence competently, the jury would have been bound to acquit the Petitioner.

CLAIM TWO: PETITIONER WAS FOUND GUILTY AND SENTENCED TO DEATH THROUGH THE USE OF A FABRICATED CONFESSION, IN VIOLATION OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS

72. Petitioner was deprived of his right to a fair and reliable determination of guilt and penalty, as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, because of the State's reliance on a fabricated confession and by the State's thwarting of defense efforts to expose that fabrication.

73. All other allegations, facts and claims contained in prior pleadings are incorporated as if fully set forth herein.

74. The prosecution presented evidence that Petitioner exclaimed, while lying nearly

unconscious on a hospital emergency room floor on December 9, 1981, that he shot the deceased officer and hoped he would die.

75. This evidence against Petitioner was concocted and false.

76. Kenneth Pate now reveals that Priscilla Durham, a hospital security guard who alleged hearing a confession, admitted to concocting the story. Declaration of Kenneth Pate, Apr. 18, 2003.

77. Mr. Pate has demonstrated that Ms. Durham never heard such a confession because none was ever made. As he explained:

2. Sometime around the end of 1983 or the beginning of 1984 I had a telephone conversation with Priscilla Durham in which the subject of Mumia Abu-Jamal came up.

4. Priscilla began to complain about the way she was treated on the job, about her back hurting, and them `treating her like that' after all she did for them they laid her off.

5. Then Priscilla started talking about Mumia Abu-Jamal. She said that when the police brought him in that night she was working at the hospital. Mumia was all bloody and the police were interfering with his treatment, saying "let him die."

6. Priscilla said that the police told her that she was part of the "brotherhood" of police since she was a security guard and that she had to stick with them and say that she heard Mumia say that he killed the police officer, when they brought Mumia in on a stretcher.

7. I asked Priscilla: "Did you hear him say that?" Priscilla said: "All I heard him say was `Get off me, get off me, they're trying to kill me.'"

8. Priscilla also said there was a lot of chaos and confusion going on when the police brought Mumia in and when they were talking to her.

Exhibit 2, Declaration of Kenneth Pate, *supra*.

78. Obviously, Priscilla Durham was manipulated into alleging that she heard Petitioner confess to shooting Officer Faulkner. However, as revealed in her statements to Kenneth Pate, Petitioner was severely wounded, there was tremendous commotion, and the only

words uttered by Petitioner concerned his fear of the police officers.

79. No police officer reported this alleged confession until nearly two months after its supposed elicitation. Further, the allegations that Petitioner confessed did not emerge until shortly after he filed complaints of police brutality.

80. Further, it is inconceivable that if Petitioner had shouted out: "I shot the motherfucker and I hope he dies", all of the police officers and other hospital personnel who surrounded Petitioner at the time would not likewise have reported such a statement. It is equally beyond belief that Officer Gary Wakshul, who was at Petitioner's side, would have stated in his report that Petitioner "made no comments" and his partner, Officer Trombetta, would likewise fail to report it.

81. Ms. Dunham's statements to Kenneth Pate regarding police inducement and her fabrication demonstrate the reason for this lengthy delay in reporting the alleged confession that should have been dramatic enough to prompt immediate disclosure.

82. Priscilla Durham conceded, at trial, that she met and spoke with officers from the Sixth Police District virtually every day of the week. 6/24/82; 44-45. She also knew and had spoken to officer Faulkner, the last occasion being only about two hours before he was shot. 6/24/82; 37.

83. At trial, Priscilla Durham claimed that Petitioner shouted the confession twice: as he was being brought into the emergency area and being laid on the floor just inside the doors (6/24/82; 28; 55) and immediately before he was taken into the emergency room itself (6/24/82; 30). She further testified that when Petitioner made his initial confession, he was uncontrollable and screaming. 6/24/82; 59-61.

84. At the trial, Dr Coletta gave evidence that Petitioner was critically wounded, that he did not hear any statement from him (6/28/82; 69) and furthermore that he was in no condition to struggle as Priscilla Durham claims. "He was weak. He could move, but he was

weak." 73. "I would say he was on the verge of fainting ... in other words, if you tried to stand him up, he would not have been able to stand up." 76. He was also handcuffed. 77.

85. At the trial, a psychiatric resident, Dr Cudemo, also testified about his observations while Petitioner was on the floor of the emergency area shortly before he was admitted into the treatment room at about 4.20 a.m. 6/29/82; 14. She stated that a police officer picked up Petitioner's foot and that Petitioner then raised his head, his arms and his right leg and emitted "a moan." 23. Shortly after this incident, a police officer asked her to leave the emergency area. 25.

86. Thus, it would be incredible if Petitioner had made this confession in the first place. The allegation did not surface until two months after the incident and there are three mutually inconsistent and incompatible versions of how, when and in what circumstances Petitioner allegedly made it.

87. Mr. Pate's declaration clearly challenges the testimony of Priscilla Durham, the only individual besides police officers, who testified to hearing the alleged confession. Declaration of Kenneth Pate, *supra*.

THE PETITION IS TIMELY FILED

88. Petitioner's claims are timely under 42 Pa.C.S. § 9545(b), which states in relevant part:

- (b) Time for filing petition.
 - (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:
 - (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States; [or]
 - (ii) the facts upon which the claim is predicated were unknown to the

petitioner and could not have been ascertained by the exercise of due diligence

- (2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.
- (3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

42 Pa. C.S. § 9545(b).

89. This petition is timely pursuant to 42 Pa.C.S.A. Sec. 9545(b)(1)(ii), in that the facts upon which the claims are predicated were unknown to Petitioner and could not have been ascertained by the exercise of due diligence.

90. Further, the claims herein involve prosecutorial suppression of exculpatory evidence and presentation of false evidence, in violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963); and its progeny. Such claims fall within the statutory exceptions to the PCRA time bar, in particular subsection (b)(1)(i): "the failure to raise the claim[s] previously was the result of interference by government officials [the *Brady* violations] with the presentation of the claim[s]". The exculpatory material is described above. Had the prosecution revealed to the defense that it was providing false evidence that implicated Petitioner in the homicide, there would be no need to present the newly discovered evidence at this time.

91. This newly discovered evidence not have previously been obtained by Petitioner in the exercise of due diligence because its discovery was wholly dependent upon Yvette Williams coming forward as a witness, and was the product of prosecutorial fraud and the suppression of exculpatory evidence. Declaration of Yvette Williams, Jan. 28, 2002. A Petition for Post-Conviction Relief was denied by this Court in late 2001. Order, Dec. 11, 2001. Thereafter the matter was appealed to the Pennsylvania Supreme Court. Notice of Appeal, Jan. 9, 2002.

92. The Declaration of Ms. Williams was obtained January 28, 2002, three weeks after *Commonwealth v. Abu-Jamal* was on appeal. Likewise, Kenneth Pate did not come forward with his declaration until long after the matter was on appeal. Declaration of Kenneth Pate, Apr. 18, 2003

93. Petitioner could not file a successor PCRA petition because of the pendency of the action before the Pennsylvania Supreme Court. *Commonwealth v. Lark*, 548 Pa. 441, 698 A.2d 43 (1997).

94. Nevertheless, two weeks after obtaining the newly discovered evidence from Ms. Williams, Petitioner brought the newly discovered evidence to the attention of the Pennsylvania Supreme Court. He unsuccessfully sought a remand, with the Declaration of Yvette Williams filed as an attachment. Appellant's Motion for Remand To Take Testimony From Yvette Williams, Feb. 14, 2002. The state opposed the Court of Common Pleas hearing the newly discovered evidence. Commonwealth's Answer To Motion for Remand, Feb. 21, 2002; *see also* Petitioner Jamal's Reply To Commonwealth's Answer To Motion for Remand, Mar. 8, 2002. The motion for remand was denied. Order, Mar. 28, 2002.

95. Thereafter Petitioner could not file a successor petition before this Court because the denial of PCRA until the Pennsylvania Supreme Court ruled on the appeal. A decision was finally rendered on October 8, 2003. *Commonwealth v. Abu-Jamal*, A.2d , Pa. Sup. Ct. No. 364 CAP (Oct. 8, 2003).

96. This petition is filed with this Court within the 60-day period of the discovery of the evidence which forms the basis for the claims pursuant to permitted by 42 Pa. C.S. § 9545(b).

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that:

- a. His conviction and sentences of imprisonment be reversed;
- b. The Commonwealth be ordered to respond to this Petition;
- c. The Court grant leave to amend this Petition as may become necessary;
- d. The Court grant an evidentiary hearing on the claims contained in this Petition;

and

- e. The Court grant any other relief deemed just and appropriate.

Dated: December 5, 2003

Respectfully submitted,

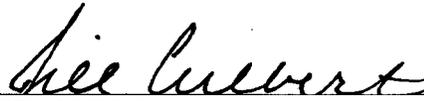


ROBERT R. BRYAN
2088 Union Street, Suite 4
San Francisco, California 94123-4124
Telephone: (415) 292-2400

Lead counsel for Mumia Abu-Jamal, Petitioner

JUDITH L. RITTER, Esq.
Pennsylvania Attorney ID# 73429
Widener University School of Law
P.O. Box 7474
4601 Concord Pike
Wilmington, Delaware 19801
Telephone: (302) 477-2121

Local counsel for, Mumia Abu-Jamal, Petitioner



JILL CULBERT

Law Offices of Robert R. Bryan
2088 Union Street, Suite 4
San Francisco, California 94123-4117
Telephone: (415) 292-2400

Associate counsel for Mumia Abu-Jamal, Petitioner

STEVEN W. HAWKINS

120 Wooster Street, Second Floor
New York, New York 10012
Telephone: (212) 965-0400

Associate counsel for Mumia Abu-Jamal, Petitioner

CERTIFICATE OF SERVICE

I, Judith L. Ritter, hereby certify that on this 8th day of December, 2003, I served the foregoing PCRA Petition upon the following person by depositing the same in the United States

Mail, first class postage prepaid at the following address:

Hugh J. Burns, Jr.
Assistant District Attorney
District Attorney's Office
1421 Arch Street
Philadelphia, PA 19102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 8th day of December, 2003, at Philadelphia, Pennsylvania.

JUDITH L. RITTER, Esq.
Pennsylvania Attorney ID# 73429
Widener University School of Law
P.O. Box 7474
4601 Concord Pike
Wilmington, Delaware 19801
Telephone: (302) 477-2121

Local counsel for Mumia Abu-Jamal, Petitioner