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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CRIMINAL SECTION TRIAL DIVISION

COMMONWEALTH	:	
	:	CP-51-CR-0417523-1992
v.	:	CP-51-CR-0417792-1992
	:	CP-51-CR-0418063-1992
CHRISTOPHER WILLIAMS	:	

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

TO THE HONOROABLE GLENN BRONSON:

LAWRENCE KRASNER, District Attorney of Philadelphia, by his Assistants, PATRICIA CUMMINGS and THOMAS GAETA, respectfully submits this MOTION FOR *NOLLE PROSEQUI* PURSUANT TO PA. R. CRIM. P. 585(a). Defendant, Christopher Williams, was convicted and sentenced to death in 1993 for first-degree murder and related offenses. That conviction was subsequently vacated due to ineffective assistance of his trial counsel for failing to consult with or present expert testimony to rebut the account of the

Commonwealth's star witness, James White, who claimed to be an accomplice to the crimes. *See* Dec. 30, 2013 Opinion Granting PCRA Relief at 38–39 ("[T]he crime scene, forensic, and medical evidence do far more than raise a reasonable doubt. As a whole, a jury could readily find that from this evidence that White lied at trial.").

After a thorough review and investigation of the case, the Commonwealth has confirmed that in addition to the Sixth Amendment violation that occurred in the original trial of this case, a plethora of significant material, exculpatory evidence was not disclosed to the defense at the time of the original trial. In fact, much of this evidence was also not disclosed until recently when Williams' trial counsel was provided open file discovery after many pre-trial requests had been made and hearings held on the matter during the pending retrial.

The recently disclosed *Brady* information further undercuts the uncorroborated accomplice evidence that originally implicated Williams in the crimes. Based on this fact and the record as a whole, the Commonwealth has concluded there is insufficient evidence to make out a *prima facie* case against Williams.[1]

The Commonwealth now respectfully moves to *nolle prosse* all charges and in support thereof submits the following:

1. Williams is charged with the 1989 murders of Otis Reynolds,

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[1] Trial courts should grant motions to *nolle prose* unless they determine that there is sufficient evidence to make out a *prima facie* case against a defendant or it appears that the defendant's right to a speedy trial would be violated if the motion were granted. *Commonwealth v. Stivala*, 645 A.2d 257, 262 (Pa. Super. Ct. 1994) ("the determination of whether there was sufficient evidence to sustain a *prima facie* case is ultimately a judicial one and subject to the trial court's determination.").

Gavin Anderson, and Kevin Anderson.[2]

2. At Williams' original trial, the Commonwealth's primary witness was James White. The Pennsylvania Supreme Court set forth a thorough summary of his testimony in its 2016 opinion affirming the grant of relief in Williams' trial:

> James White, a purported eyewitness and accomplice to the murders, testified that Reynolds and the Anderson brothers were in Philadelphia to purchase two AK-47s from Williams. According to White, Williams was the leader of a gang that sold drugs and guns; White was a junior member. Unbeknownst to the victims, the arms deal was a ruse, and Williams planned to rob them when they met. White testified that he stole a dark colored van at Williams' request to aid in the robbery plan. Williams had a duffle bag full of guns stashed in a closet at his girlfriend's house, which he passed out to the members of his gang participating in the robbery. Williams gave White a shotgun, Bennett a .357 automatic weapon and kept for himself what White described as an "[uzi] type of handgun," as well as the .9 millimeter gun he "always" carried.
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> According to White, on September 25, 1989, shortly after the victims arrived at the designated location for the sham gun sale, Williams, Wilson, Bennett, White and other members of the gang reportedly held them at gunpoint and demanded money. Upon receiving from one of the victims the $2400 brought to make the gun purchase, Williams continued to demand more money. One of the three victims ultimately confessed that there was more money at another location, prompting Williams, Bennett and a third person, known to White only as "Steve," to take that victim in the stolen van to obtain the money, leaving White, Wilson and a third gang

[2] Williams was charged alongside two codefendants, Theophalis Wilson and Ricky Bennett. Williams was also charged with the murder of cabdriver William Graham, but was acquitted of that offense.

member (whose name White did not know) to guard the remaining two victims.

White testified that Williams and his cohorts returned approximately thirty minutes later without the victim they had taken with them. When White inquired about the missing victim, Bennett allegedly informed him that Williams shot the victim in the head.

Upon his return, Williams demanded more money from the two remaining victims, and they responded that there was none. Williams instructed Wilson and Steve to "get a Cadillac," while Williams, White, Bennett, the other, unnamed gang member and the two victims got into the stolen van. The unnamed gang member drove the van, White rode in the front seat and Williams and Bennett rode in the cargo area with the two victims.

According to White's testimony, the van followed behind the Cadillac through and around Philadelphia while Williams and Bennett continued to interrogate the victims about money. The victims repeatedly denied the existence of additional money. White then allegedly observed Williams pull out his gun and shoot one of the victims "in the face" two or three times while "the man was looking directly at Williams." In a statement given to police about the murders, White specified that the second victim (the first of the two victims shot in the van) was "the smallest guy" and that Williams shot him while he looked at both Williams and Williams' gun. The victim slumped over in the van. a short time later, the van slowed (but did not stop), and Bennett and Williams "threw," "tossed," or "pushed" him out of the van onto the street. Although his description of how this victim was removed from the van was not entirely consistent, White agreed with the characterization by Bennett's defense counsel that "one had [the victim's] hands and one had his legs and they just threw him out into the street"; they "fired him right out the back."

> White testified that he then observed Williams put his gun to the face of the third victim. White turned away, hearing two gun shots and the back of the van open. When White turned back, the third victim was gone. White presumed that, like the second victim, Williams and Bennett threw the third victim out of the van. Williams was unsure whether the van ever traveled onto the sidewalk, but he testified, without qualification, that the van remained on the street and was moving when the second victim was thrown from the van.

Commonwealth v. Williams, 141 A.3d 440, 446-47 (Pa. 2016) (cleaned up).

3. After carefully summarizing White's testimony, the Pennsylvania Supreme Court described the remaining evidence against Williams and his codefendants as follows:

> A police witness testified that he responded to the location of Reynolds' body, on a cobblestone driveway in a residential neighborhood, in the early morning hours of September 26, 1989. Reynolds was on his back, with his feet on the curb and his head pointed away from the street, his head resting on a bandana or kerchief, which, according to the witness, appeared to have originally been around Reynolds' head or neck. He had sustained two gunshot wounds to the left side of his face near his left ear, approximately three quarters of an inch apart.
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> At 7:22 a.m. the same day, police were notified about the discovery of Kevin Anderson's body, located approximately a mile and a half away from Reynolds, lying face down on the sidewalk. He had been shot twice—once in the back of the head, once on the left side of his head.
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> A couple of hours later, police came to the location of Gavin Anderson's body, located approximately a half mile from his brother, lying on his stomach in a parking area about fifteen feet away from the street. He had been shot three times—in the right cheek, the right temple, and the back of the neck.

> Apart from a healing gunshot wound observed on Gavin Anderson that predated his death, **none of the victims had any other injuries on their bodies**. Dr. Paul J. Hoyer, Assistant Medical Examiner for Philadelphia, testified that whether a person would sustain additional injuries (scrapes, bruises, abrasions, contusions) resulting from a fall after a shooting would depend on the type of surface upon which the person fell, the speed at which they were traveling (e.g., if they were running at the time they were shot), and whether the surface was wet or dry. If a person was running when shot, for example, Dr. Hoyer stated that he would expect to see abrasions on the body from the fall. According to Dr. Hoyer, the absence of non-gunshot injuries on a body that fell after being shot means only that the body "did not fall against a hard surface with a lot of force." The trial court precluded defense counsel from posing a hypothetical question regarding whether Dr. Hoyer would expect to see additional injuries to a body that was thrown or pushed onto concrete from a moving van after being shot. According to the trial court, there were "too many variables" to allow Dr. Hoyer to answer that question.
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> Dr. Ian Hood, Deputy Medical Examiner for Philadelphia, testified that it is not uncommon for a person who is shot and killed while standing to sustain minor abrasions, bruises or lacerations on his "bony prominences" when he collapses or falls. Dr. Hood testified, however, that the absence of such injuries did not mean that the victim did not fall. The third Commonwealth expert, Dr. Hygow Park (the Assistant Medical Examiner for Philadelphia who performed the autopsy of Kevin Anderson), was not asked any questions on this subject.

Id. at 447-48 (cleaned up and emphasis added).

4. After a thirteen-day trial before the Honorable Paul Ribner, the jury convicted Williams and Wilson of three counts of first-degree

murder.[3] Wilson, a juvenile at the time of the offenses, was sentenced to a mandatory term of life imprisonment; Williams was sentenced to three consecutive death sentences.

5. Williams filed a timely petition under the Post Conviction Relief Act, 42 Pa.C.S.A. §§ 9541–9546 ("PCRA") in July 1999. Among other things, he claimed that his trial counsel was ineffective "for failing to properly cross-examine the Commonwealth's experts or call a forensic expert in defense, as the physical evidence did not align with White's testimony about how the shootings occurred and their aftermaths." *Williams II*, 141 A.3d at 449. Significantly, the Commonwealth conceded in those proceedings that "[u]nless the jury believed White, . . . the prosecution's case against [Williams] would fail." *Id.* at 465 n.24 (quoting Commonwealth's Motion to Dismiss, 6/5/2001, at 20) (alterations in original).

6. During the PCRA hearing before the Honorable William J. Manfredi, Williams presented expert testimony from Robert Tressel, a crime scene reconstruction expert, that the physical evidence in the case was inconsistent with White's testimony that the victims were thrown from a van after being shot:

> Tressel explained that blood flows gravitationally, and because there was no change in the direction of the blood flow or "remnants of the first blood flow," which would be observed if the victim was moved from one position to another after he was shot, the evidence showed that the body was shot and fell in the location it was found.

Id., 141 A.3d at 455.

7. Williams trial counsel failed to present any evidence from such

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[3] Bennett was acquitted of all charges except for one count of corrupt organizations. *See* N.T., 8/6/1993, at 71–74, 76–80.

an expert at trial, and had no reasonable basis for that failure. *Id.* at 465. Both the PCRA court and the Pennsylvania Supreme Court held that that error was consequential:

> The expert testimony presented at the PCRA hearing, found credible by the PCRA court, was that White's account of two of the victims being shot inside a van and thrown therefrom onto the sidewalk was incompatible with the medical and forensic evidence presented. Rather, Tressel testified . . . that the forensic evidence revealed that the victims were shot in the locations where they were found. This testimony, if believed by the jury, coupled with the other evidence impeaching White's credibility, would likely have changed the jury's mind and resulted in Williams' acquittal of the three murders.

Id. at466–67 (footnote omitted).

8. Separate and apart from the evidence undercutting White's account and the evidence pointing towards other potential suspects, "White's credibility was dubious at best." *Id.* at 466. As the Pennsylvania Supreme Court explained:

> [White] gave numerous, conflicting, statements to the police about various crimes that he purportedly witnessed, including one highly detailed statement wherein he falsely implicated Williams as the perpetrator of another murder. He admitted multiple times during his testimony that he had previously lied to police. At the time of trial, White was a six-time convicted first-degree murderer, serving six concurrent life sentences pursuant to a plea agreement with the Commonwealth, and he admitted that he was involved in the commission of other crimes as well. Further, White did not initially tell the police about the murders in question, and only did so after a fellow inmate (in whom White had apparently confided) told the police that White disclosed his involvement in these murders.

Id. at 466 (citations omitted); *see also id.* at 457 ("Because White provided such inconsistent statements at trial about what happened—stating in one instance that a victim was forcibly thrown by two men holding his hands and feet, and in another that the victim was simply 'pushed'—[the Commonwealth's expert] could not decipher precisely what happened").

9. In 2013, the PCRA Court granted Williams' petition in part, vacated his judgment of sentence, and granted him a new trial. The Pennsylvania Supreme Court affirmed in July 2016. *Id.*

10. The case is presently listed for a pre-trial conference before this Court on December 23, 2019.

11. In May, 2018 the Philadelphia District Attorney's Office Conviction Integrity Unit ("CIU") began a comprehensive review of William's co-defendant, Wilson's, PCRA guilt/innocence claims as well as his *Miller* resentencing claim. During the course of that review, an internal decision was made to have the CIU also review William's case for the purpose of deciding whether the Commonwealth could, should and would proceed to retry Williams in a new trial. Then in March, 2019, the CIU provided Williams' counsel with a copy of the District Attorney's Office's file ("DAO file") in this case—over forty-thousand pages of documents.

12. During the parties' review of the DAO file, it became apparent that there was a welter of evidence that had never been disclosed to Williams or his codefendant, Wilson. As accurately set forth in Williams' recent Supplemental Motion to Bar Retrial, the file review disclosed evidence that contradicted White's account; impeached other witnesses; inculpated other specific individuals; and indicated that the victims in this case were caught in an ongoing dispute between two extremely violent gangs, either of which may have been responsible for their deaths. *See* Motion at 8-18.

13. In light of the many previously-identified problems with White's testimony and the previously undisclosed evidence that further undercuts his account and inculpates others in the crimes with which Williams is charged, White's trial testimony has been thoroughly and completely discredited.

14. Indeed, James White testified during a PCRA evidentiary hearing in this case and recanted his account of the crimes.

15. On December 4, 2019, undersigned counsel interviewed White at the State Correctional Institution-Retreat. He continues to disavow his trial testimony.

16. Consequently, although the Commonwealth previously sponsored White as a witness to obtain convictions against Williams and Wilson, the Commonwealth does not believe White's account to be true and the Commonwealth further believes that the physical evidence and other evidence obtained during the original investigation of the crimes actually demonstrate the falsity of White's account of the crimes.

17. The Pennsylvania Rules of Professional Responsibility provide that "[a] lawyer may refuse to offer evidence . . . that the lawyer reasonably believes is false." Pa. R. Prof. Resp. 3.3(a)(3). However, prosecutors owe a heightened duty of candor to the Court. *See, e.g.*, Bruce A. Green, *Candor in Criminal Advocacy*, 44 Hofstra L. Rev. 1105, 1115–19 (2016) (describing prosecutor's duty of candor). In light of that heightened duty, prosecutors "should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true." ABA Standards for Criminal Justice: Prosecution and Def. Function, Standard3-1.4(b) (4th ed. 2015).

18. Because the Commonwealth no longer credits White's trial

testimony and account of the murders with which Williams is charged, it cannot and will not offer White's prior testimony and statements as evidence in any future proceedings against Williams.[4]

19. As there is no other competent evidence of Williams' guilt, the Commonwealth likewise must refrain from prosecuting the charges against him. Pa. R. Prof. Resp. 3.8(a).

20. Finally, as referenced at the outset and supported by the facts delineated herein, the Commonwealth respectfully submits there is insufficient evidence to make out a *prima facie* case against Williams and requests that this Court enter a *nolle prosequi* pursuant to Pa. R. Crim. P. 585(a). *Stivala*, 645 A.2d at 262.

Respectfully submitted,

PATRICIA CUMMINGS
Supervisor, Conviction Integrity Unit

THOMAS GAETA
Assistant District Attorney

LAWRENCE KRASNER
District Attorney of Philadelphia

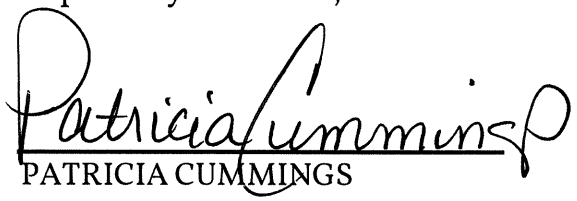
Date: December 18, 2019

[4] The Commonwealth will likewise refrain from offering this evidence in any proceedings against Williams' codefendant, Theophalis Wilson, and will recommend that relief be granted in his now-pending postconviction proceedings.

VERIFICATION

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

Respectfully submitted,



PATRICIA CUMMINGS
Supervisor, Conviction Integrity Unit

CERTIFICATE OF SERVICE

I, Patricia Cummings, Assistant District Attorney, hereby certify that a true and correct copy of the foregoing *Motion For Nolle Prosequi Pursuant To Pa. R. Crim. P. 585(a)* was served on December 18, 2019, to the parties indicated below via hand delivery:

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