COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
	:	Docket Number
Respondent,	:	CP-22-CR-1544-1996
	:	
v.	:	Honorable Todd A. Hoover
	:	
Lorenzo Johnson,	:	
	:	
Petitioner.	:	
	:	

PETITIONER'S REPLY TO THE *COMMONWEALTH'S RESPONSE* TO PETITIONER'S THIRD PCRA PETITION AND SUPPLEMENTS AND MOTION FOR EVIDENTIARY HEARING

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Dated: March 6, 2015
Swarthmore, Pennsylvania

PRELIMINARY STATEMENT

Pending before the Court are Mr. Johnson's *Third Petition for PCRA Relief* (filed on August 5, 2013), and three *Supplements to the Petition*. These pleadings will be referred to as *Petition* and *Supplement 1* (filed March 3, 2014), *Supplement 2* (filed August 7, 2014) and *Supplement 3* (filed November 12, 2014).

The Commonwealth filed a consolidated *Commonwealth of Pennsylvania's Response to Lorenzo Johnson's Third Set of Counseled PCRA Claims* (filed on December 24, 2014). This document will be referred to as *Commonwealth's Response* and will be cited as *CR.*

Transcripts of the trial proceedings before this Court will be cited as NT, followed by reference to the sequentially numbered pages of the transcript. Other record proceedings will be cited as NT followed by the date of the proceeding and other relevant page numbers.

All other citations are either self-explanatory or will be explained. All emphasis is supplied unless otherwise indicated.

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INTRODUCTION

Counsel has presented this case as one of actual innocence, and continues to believe that his client is innocent of the killing of Tarajay Williams. Nonetheless, the Court need not that reach that issue at this juncture, because, as described herein, counsel has uncovered substantial violations of due process that require that Mr. Johnson's conviction be vacated and that he be awarded a new trial.[1]

Specifically, counsel has presented four instances in which exculpatory evidence in possession of the Commonwealth was not provided to trial counsel as required by *Brady v. Maryland*, 373 U.S. 83, and its progeny, as follows:

- The pre-trial Statement of the primary Commonwealth witness, Carla Brown, was not disclosed to trial counsel and was obtained by current counsel as part the Attorney General's disclosure of 122 pages of documents on September 12, 2014.[2]

- A statement obtained from retired Harrisburg Detective Robert Dillard on July 2, 2013 contains exculpatory information never disclosed to trial counsel that Carla Brown provided to police multiple versions of the events of the night of the Williams killing and that police "worked on" her for months before she provided the version of events that police believed was true. These prior versions of the events that did not make it into her trial testimony,

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[1]As Petitioner believes he is entitled to relief on the above *Brady* claims, he does not address the other claims for relief set forth in the *Petition*. As to those claims, he relies on the arguments already set forth in the *Petition.*

[2]The full circumstances of the discovery of this Statement and its significant exculpatory value, *i.e.* materiality, are set forth in *Supplement 3*.

have yet to be disclosed to any lawyer who has ever represented Mr. Johnson.[3]

- A close and "family-like" relationship existed between the other key Commonwealth trial witness, Victoria Doubs and the assigned Detective Kevin Duffin, that was likewise not disclosed to trial counsel, and was discovered by undersigned counsel when statements were taken from the brothers of both Ms. Doubs and Detective Duffin on January 31 and February 24, 2014.[4]

- Pages one through eight of the police reports generated by the Harrisburg Police Department were provided to the undersigned on June 13, 2014. They had not been provided to trial counsel. Included in those eight pages is an indication that Carla Brown was considered a "suspect" in the killing of Tarajay Williams, and the pages further indicate that there were no witnesses to the killing. Neither point was brought out before the jury, and each is exculpatory.[5]

While the Commonwealth says it would never countenance keeping an innocent man imprisoned, *see e.g. CR*, 9, it has interposed every procedural bar even arguably available to it in an attempt to defeat the above claims. It is certainly the Commonwealth's right to raise these procedural defenses, however, the Commonwealth's reliance on procedural bars is not consistent with its claim that it

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[3]Detective Dillard's statement is discussed in the *Petition* at ¶ ¶ 46-49.

[4]The details regarding these statements and their materiality are set forth in *Supplement 1*.

[5]The facts regarding how these pages were obtained, and their materiality are discussed in *Supplement 2*.

seeks the truth.

Contrariwise, the above *Brady* violations do not implicate mere legal niceties. Rather, they had an impact on the truth-determining function of the trial that resulted in Mr. Johnson's conviction.

As now-retired Detective Dillard told undersigned counsel's investigator, "developing leads was very difficult" in this case. Dillard Statement, ¶ 6, *Petition*, Exhibit A. If leads were "difficult" for the Harrisburg Police Department – a professional police force with far greater resources and authority to investigate than Mr. Johnson could ever hope to have – to develop at the time of the trial prosecution, Petitioner cannot be faulted for not "timely" uncovering the facts that form the basis of the above claims.

The Commonwealth reliance on the PCRA time bar, the serial petition bar, and other procedural arguments interposed in the *Commonwealth's Response*, is particularly galling, inasmuch as it blames Petitioner for his tardiness in presenting claims based on evidence that it has suppressed for two decades. If the Commonwealth's professed desire to get to the truth is truly paramount, it would join Petitioner in his quest to see that these claims receive proper evidentiary development before this Court. Alas, it does not.

Petitioner will address in detail the Commonwealth's procedural arguments.[6] It is sufficient to note preliminarily that the law – and fundamental fairness – do not permit the prosecutor to fail to disclose exculpatory evidence, and then claim that a defendant is procedurally barred from raising that evidence once it is finally discovered.

What follows is a review of and reply to each of the Commonwealth's procedural objections, and merits responses, related to each of the above noted claims. It is Petitioner's earnest hope that this Court will permit him the opportunity to prove the validity and truth of each of his allegations. In keeping with the Commonwealth's professed desire to seek truth in this case, it is noteworthy that the point of the *Brady* rule is designed to facilitate truth-seeking:

> . . . is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; **our system of the administration of justice suffers when any accused is treated unfairly.** An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." **A prosecution that withholds evidence which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards**

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[6]The Commonwealth's procedural objection that neither the *Petition* nor any of the three *Supplements* are accompanied by a verification from Petitioner is cured by the *Verification* signed by Mr. Johnson, attached as Exhibit A.

of justice.

Brady v. Maryland, 373 U.S. 83, 87(1963). It is in this spirit that Petitioner offers the following *Reply* and moves for an evidentiary hearing.[7]

I. THE WITHHELD CARLA BROWN STATEMENT

In response to the arguments presented regarding the *Carla Brown Statement* (hereafter, *CBS*), the Commonwealth offers a number of points suggesting that the *CBS* was provided to trial counsel. None of these points demonstrate that it was. To the contrary, counsel has obtained declarations from trial counsel, Deanna Muller (Exhibit B),[8] and her predecessor in the case, Edward Brandenstein (Exhibit C), definitively stating that neither had ever seen the Brown Statement until it was recently presented to them by the undersigned. These conclusive statements from trial counsel **trump** the Commonwealth's non-specific arguments that the *CBS* was turned over pre-trial. At a minimum, the record demands a hearing on this critical

[7]Petitioner has already explained the materiality of each of the *Brady* claims in either the *Petition*, or one of the three *Supplements*. For economy's sake, they are not repeated here, but are identified and incorporated.

[8]Prior to her post-trial marriage, Ms. Muller was Ms. Wagner, and her name appears as Wagner in the trial transcripts. For simplicity, counsel refers to her as Muller throughout.

fact.[9]

A. Facts Attested to by Both Trial and Predecessor Counsel in this Case Demonstrate that the Statement was Never Turned Over to Them

Mr. Johnson was initially represented by Edward Brandenstein of the Dauphin County Public Defender. In a recent declaration, Mr. Brandstein makes a number of observations relevant to Petitioner's contention that the *CBS* was not disclosed. His perspective and recollection are important as he was Mr. Johnson's lawyer when the *CBS* was alleged to have been provided:

> I am an attorney admitted to practice law in the Commonwealth of Pennsylvania. I am employed by the law firm of Meyer, Darragh, et al, with offices in Pittsburgh. I graduated from law school in 1994 and gained employment with the Office of Public Defender for Dauphin County, Pennsylvania. In that capacity I was involved in the representation of Lorenzo Johnson with regard to homicide charges lodged against him in 1995. I left the office before the case went to trial. I have been asked by current counsel for Mr. Johnson to provide this declaration regarding certain discovery issues that I understand have arisen. This declaration was prepared by counsel for Mr. Johnson. I have reviewed it, and it is accurate.
>
> I have reviewed the cover jacket to the Public Defender file on this case

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[9]Regrettably, the Commonwealth has asserted that Petitioner and his lawyer's contention that this *CBS* was not disclosed constitutes "fraud" and its presentation is "unethical." *CR*, 34, 90. It is disquieting whenever an attorney makes such allegations, but it is particularly troublesome when a law enforcement officer, such as an Assistant Attorney General, bandies such terms, with their implied threat of action to be taken against the party making the claims. Counsel will not take the bait by responding in kind, and will simply allow the facts to speak for themselves.

(attached as Exhibit 1 to this declaration). I observed my handwritten notations on the jacket. These notes reflect my attempt at obtaining discovery from the Office of Attorney General. The fact that I recorded my attempts to obtain discovery tells me that I must have been having a difficult time making contact with AAG Abruzzo to obtain discoverable material and/or receiving a response from Mr. Abruzzo that I felt it was necessary to document my attempts. The notes on the file tell me that I had a telephone conversation with Chris Abruzzo on 8/16, that I unsuccessfully attempted to obtain discoverable material from him on 8/19 (no luck), I called Mr. Abruzzo on 8/22 and left a message for a return call (L.M.), and called on 8/23 and left a message for a return call (L.M.). I assume that I must have made additional attempts to contact Mr. Abruzzo between August 23 and the October 4 discovery conference, but do not see those efforts memorialized on the file.

I have reviewed what has been identified to me as Exhibit A to the Third Supplement to PCRA filed by Mr. Johnson (statement of Carla Brown dated 3/27/96 taken by Det. Duffin and Inv. Dillard). **It seems incomprehensible to me that Chris Abruzzo would have specifically identified the other witness statements that were produced in discovery in his October 7, 1996 letter transmitting discovery (which I have also reviewed, and is attached as Exhibit 2 to this Declaration), but omitted listing the witness statement of Carla Brown, had Carla Brown's witness statement been provided. I have now read Carla Brown's statement, and I do not recall ever having read the statement before**. Her statement contains significant areas for impeachment of Brown, which I would certainly have used if I had tried the case.

Had Carla Brown's statement been provided to the defense prior to trial, it would have been in the file maintained by the Public Defender's Office.

Declaration of Edward Brandenstein, dated February 18, 2015, attached as Exhibit C.

As the trial lawyer in the case, Ms. Muller's Declaration is even more significant to the resolution of this dispute. Ms. Muller recalls: "After Mr. Brandenstein left the Public Defender's Office in or about October, 1996, Mr. Johnson's case was reassigned to me for trial. **I recall the case well**, as it was my first homicide trial." Muller Declaration, attached as Exhibit B, ¶ 3. After reviewing documents relevant to this claim,[10] Ms. Muller relates that she "**can state with confidence that I had never before seen**" the *CBS* before the undersigned presented it to her on February 12, 2015. *Id.*, ¶ 4. She then offers five reasons underlying her "certainty" that she had not been provided the *CBS* at the time of trial or before:

> I am **certain that the statement was not provided to me either pre-trial or during trial for the following reasons**: 1) I do not recall

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[10]Ms. Muller states:

> Prior to completing this declaration, I reviewed the following: my office's file from its representation of Mr. Johnson; the1997 trial testimony of Carla Brown and her preliminary hearing testimony; two pleadings styled: *Supplement to Petition for Relief Under the PCRA* (*Supplement)*; and *Third Supplement to Petition for Relief Under the PCRA* (*Third Supplement*) (dated March 3, 2014, and November 12, 2014, respectively); a declaration completed by former Harrisburg Police Department Detective Robert Dillard; and an October 7, 1996 letter from E. Christopher Abruzzo, the Deputy Attorney General who tried the case for the Commonwealth to Edward Brandenstein, Esq., the attorney in my Office who represented Mr. Johnson in pre-trial litigation.

Muller Declaration, ¶ 2.

> having seen it; 2) it is not contained in the file maintained by my office on this case;[11] 3) I wrote to Mr. Johnson on March 20, 2006 in response to his request for a copy of any statements made by Ms. Brown and my response was "Carla Brown did not make a written statement prior to trial;" 4) neither myself nor counsel for co-defendant Corey Walker, Mr. Shugar, used the statement to impeach Ms. Brown, although there are a number of points in the statement that contradict Ms. Brown's trial and preliminary hearing testimony, such that I would have used it to impeach her; and 5) Brown's statement was never marked or identified on the trial record.[12]

Id., ¶ 4.

Ms. Muller's "certainty" and "confidence" that the *CBS* was not previously provided to her by Mr. Abruzzo at the time of trial, is obviously of great moment. The probative value of this witness' recollection far exceeds the non-specific reasons

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[11]Mr. Brandenstein verifies that the practice of the Dauphin County Public Defender's Office "Had Carla Brown's statement been provided to the defense prior to trial, it would have been in the file maintained by the Public Defender's Office." Brandenstein Declaration, ¶ 4.

[12]Elaborating on point five, Ms. Muller states:

> [D]uring my tenure at the Public Defender's Office, it has been common practice for the prosecution to elicit from its witnesses the fact that they provided a written statement to the police, as a way of bolstering the witnesses' testimony, and then identifying the statement on the record as a Commonwealth exhibit. Therefore, the absence of any mention of it on the trial record, is strong confirmatory evidence that it was not provided to me pre-trial or during trial.

Muller Declaration, ¶ 4.

offered by the Commonwealth to support its contrary position.[13]

B. The Commonwealth's Non-Specific Assertions that the Statement was Disclosed are Trumped by the Clear Recollection of Brandenstein and Muller

The Commonwealth offers five argument to support its position that the Statement was provided pre-trial. None overcome the clear recollection of trial counsel and her predecessor, described in the above declarations.[14]

First, the Commonwealth points to the prior PCRA testimony of Ms. Muller, that she "went to his [Abruzzo's] office and he pretty much let me look at everything" *CR*, 86, 89, as evidence of an "open file" showing that the *CBS* was disclosed. This is a self-serving and fallacious argument that proves nothing. If the Commonwealth's attorney was going to withhold the *CBS*, then obviously he would not have included it in the materials that he permitted trial counsel to review. Indeed, the United States Supreme Court has granted relief in cases in which an exculpatory piece of evidence

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[13]Ms. Muller's certainty that the *CBS* was not provided pre-trial should weigh heavily in the Court's review. Counsel is aware that the Court is familiar with this lawyer, but for record-purposes, counsel points out that Ms. Muller has practiced in the Dauphin County Court of Common Pleas for her entire career as an attorney, and has appeared before this Court in particular on many occasions. She has risen through the ranks of the Public Defender Office and is currently a high ranking supervisor. Her word on this topic should carry great weight.

[14]Notably missing from the *Commonwealth's Response* is any statement from trial prosecutor Abruzzo that the *CBS* was provided. The undersigned attempted to communicate with Mr. Abruzzo, but counsel's communication was not returned.

was found to have been withheld, despite the presence of an open file policy. *See e.g. Banks v. Dretke*, 540 U.S. 668 (2004) (awarding *Brady* relief regarding evidence that was withheld despite the presence of an alleged "open file" policy). Indeed, Judge John Jones of the United States District Court for the Middle District of Pennsylvania, in earlier habeas corpus proceedings in this case, found that exculpatory information had not been provided to the defense in violation of its obligation to do so, and **notwithstanding** its alleged open-file policy. *Johnson v. Mechling*, 541 F.Supp.2d 651, 685-686 (M.D. Pa. 2008) ("The prosecution withheld favorable evidence; Johnson reasonably relied on the government's open file policy and other representations that it had fulfilled its duty to disclose such evidence.").[15]

Second, the Commonwealth asserts that the *CBS* was disclosed along with Detective Duffin's – undated – Police Report. *CR*, 89-90. The October 7, 1996 discovery letter from Mr. Abruzzo to Mr. Brandenstein in fact identifies a "Police Report" generated by Detective Duffin. The letter does not indicate the date of the

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[15]This particular *Brady* allegation related to consideration offered to Victoria Doubs in connection with her own sentencing in another case. Although Judge Jones found that the consideration should have been disclosed, her found the non-disclosure to not be material, as Doubs was adequately impeached on this point, despite the non-disclosure. *Johnson v. Mechling*, 541 F.Supp.2d at 681 ("the Court finds that the prosecution did suppress the plea agreement and thus that Johnson had cause for failing to raise his claim on direct appeal. However, the Court also finds that Johnson has failed to demonstrate that the plea agreement was material for *Brady* purposes.")

report. And, although the Commonwealth has produced **a** police report from Detective Duffin that refers to and purports to attach the Brown Statement, the Commonwealth offers no proof that the discovery transmitted via that letter contained the *CBS*, or that the police report accompanying that letter was the one that included or referenced the *CBS*. In this regard, and as noted in Mr. Brandenstein's Declaration, the fact that the *CBS* is not **specifically referred to in the October 7, 1996 discovery letter is "incomprehensible"** when compared to the fact that the letter names the statements of other civilian witnesses.

Third, the Commonwealth maintains that defense counsel at the preliminary hearing "reflected a specific awareness of this March 27, 1996 interview and the nature of Brown's statement to police." This is also a weak argument. It is true that in Brown's preliminary hearing testimony there are a number of references to her having spoken to the police on March 27, 1996. **However**, there is an obvious difference between speaking with the police and providing a written statement. There is not a word in her preliminary hearing testimony that she gave a **written statement** to the police on that day. Again, this argument does not resolve the issue in the Commonwealth's favor.

Fourth, the Commonwealth asserts that at Petitioner's 2001 PCRA hearing, "Attorney [Muller] testified that at the time of trial, she was aware of Brown's prior

inconsistent statements, including a prior statement given to Detective Duffin." This is not so, and the latter part of this argument is a misrepresentation of the record.

In reality, Ms. Muller's 2001 PCRA testimony shows that she agrees to a leading question asked of her: "In addition to her use of drugs and cocaine, she had also given a number of prior inconsistent statements, did she not, to the police?" NT 3/7/2001, 8-9. The *CBS* is not referenced at that point in the testimony – or anywhere else during Muller's testimony or during the entirety of the PCRA hearing. In fact, the very next question asked by defense counsel references a different statement: "Q: In fact, I think in her own words, she indicated that she initially flimflammed [sic] Officer Duffin, I believe, an initial denial regarding any knowledge of this incident? A: Right, right." *Id.*, 9. Of course, there is nothing in the March 27, 1996 Brown Statement about "flim flamming" or otherwise lying to Detective Duffin. Clearly PCRA counsel was not referring to the March 27, 1996 *CBS*.

The Commonwealth's further assertion that at the 2001 PCRA hearing, "Attorney Wagner testified that at the time of trial, she was aware of Brown's prior inconsistent statements, **including a prior statement given to Detective Duffin,** ***see*** **Exhibit E [Muller's 2001 PCRA testimony**]." **This is false**. Notably, the Attorney General fails to provide a page citation to the portion of the transcript of that proceeding in which Ms. Muller is alleged to have referenced an "awareness" of

Brown's "prior statement given to Detective Duffin," by Brown, and that failure is because it does not exist. One reviews the entire transcript of the 2001 PCRA hearing to find that the March 27, 1996 *CBS* is not mentioned a single time. Nor is there a mention of Detective Duffin having taken a written statement from Brown. The Commonwealth here offers no substantiation for its false contention that Ms. Muller was aware of a statement having been given by Brown to Duffin.

That no such statement was mentioned at the 2001 hearing is consistent with Ms. Muller's Declaration that when Mr. Johnson asked for a copy of any such statement, Ms. Muller wrote to him on March 20, 2006 that **"Carla Brown did not make a written statement prior to trial."** *See* March 20, 2006 Letter from Muller to Johnson, Exhibit D to *Third Supplement*. The assertion contained in her 2006 Letter to Mr. Johnson of course endorses her Declaration that she had never before seen the *CBS*.

Fifth, the Commonwealth suggests that an allegation in Mr. Johnson's *pro se* PCRA Petition, filed on December 1, 1999, recognizing that Carla Brown was interviewed for a second time, shows that "Johnson himself was aware of the Brown statement." *CR*, 90-91. It does no such thing. As with all of its prior reasons in support of its position that the *CBS* was provided to the defense, this argument also fails to specifically reference the *CBS*. And, again, while it may evince that Mr.

Johnson was aware that Brown spoke to the police, there is a significant difference between **speaking** with the police, and providing them with a **written statement.** This is a difference that the Attorney General consistently ignores.

In the final analysis, despite hundreds of pages of prior pleadings, written communications and transcripts of prior proceedings, not a single one specifically mentions the March 27, 1996 Carla Brown Statement. It was not mentioned at trial, during PCRA proceedings, in federal habeas proceedings, or in these proceedings, until it was turned over along with 120 pages of other documents by the current Assistant Attorney General. With the exception of it being mentioned in a Duffin Police Report, the Commonwealth offers no proof that it was transmitted with that report in the October, 1996 discovery letter. Weighed against the Commonwealth's equivocal arguments is the unambiguous declaration provided by Ms. Muller – a statement that is subject to the penalties for perjury – that she had never before seen the statement. Her certainty that she never before saw the *CBS* is supported by a number of compelling points. Petitioner submits that the record on this point weighs heavily in his favor, and at a minimum, this Court should conduct a hearing on this question.

C. The Commonwealth's Representation that it was Proceeding with an "Open File" Policy Overcomes the Procedural Bars that it Advances, and there is Therefore no Impediment to Review of the Claim or an Evidentiary Hearing

There is no procedural impediment to conducting a hearing, and given the state of the record, a hearing is required.

The Commonwealth's reliance on a so-called "open-file" policy has been held to excuse a petitioner's failure to raise a *Brady* claim that was discovered years later. When a prosecutor leads defense counsel to believe that they are operating under a so-called "open file" policy, and there is a later revelation that the prosecutor in fact withheld exculpatory evidence – as Petitioner contends is the case here – counsel is permitted to rely on the prosecutor's earlier open-file representation to overcome procedural obstacles:

> In light of the State's open file policy, we noted, it is especially unlikely that counsel would have suspected that additional impeaching evidence was being withheld. Our decisions lend no support to the notion that defendants **must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed**. As we [have] observed, defense counsel has no procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.

Banks v. Dretke, 540 U.S. 668, 695-696 (2004) (internal quotation marks and citations omitted) (*citing Strickler v. Greene*, 527 U.S. 263 (1999)). The holding in *Banks* overcomes any procedural obstacles posited by the Commonwealth.

In the earlier federal habeas corpus proceedings noted above, Judge Jones, relying on *Banks* and *Strickler*, found that the Commonwealth's open-file policy, with its implicit assurance that all *Brady* information had been provided, defeated the Commonwealth's argument that a separate *Brady* violation related to Victoria Doubs, had been waived:

> Johnson was entitled to rely on the government's representations that it had disclosed all *Brady* material. Johnson's prosecutor maintained an open file policy, implicitly representing that all Brady materials would be included in the open file. . . The reasonable access that Johnson's counsel may have had to information about Doubs' plea is nullified by her reasonable reliance on the government's representations that it had met its *Brady* obligation . . . [T]he Court finds that Johnson had sufficient cause for failing to raise his *Brady* claim in accordance with state procedural rules for reasons quite analogous to those identified by the Supreme Court in *Banks* and *Strickler*.

Johnson v. Mechling, 541 F.Supp.2d 651, 685-686 (M.D. Pa. 2008) (internal citations omitted).

At the heart of all of the Commonwealth's procedural arguments is that notion that it is Petitioner's fault for not bringing this claim to court earlier – as if he was not interested in securing this information with its potential to free him. While that position is nonsensical on its face, it is refuted by the history of this case.

In the earlier federal litigation of this claim, the District Court agreed to conduct an *in camera* review of the Commonwealth file, because of the alleged

Doubs *Brady* violation. Prior to that inspection, the undersigned filed a document styled *Petitioner's Pre-Inspection Statement* (dated July 20, 2007, identified on the federal docket as document # 51) (attached as Exhibit D). In this *Statement* counsel requested while conducting the *in camera* inspection of the Commonwealth's file, that Judge Jones not only look for documents related to Doubs, but for *Brady* information related to Carla Brown. Counsel stated, in relevant part:

> While conducting its *in camera* review, the Court should also be alert to the presence of any other similar due process violations, even if they are not pled in the Petition before the Court. . .
>
> One such potential due process violation comes to mind. . . In view of Doubs testimony that she told a detective that Brown told her that the codefendant, Corey Walker, paid her with "rocks" to take "Taraja into the alleyway" it is clear that there was some evidence in the possession of the police that the primary witness against Petitioner had implicated herself as an accomplice. Her status as an accomplice would have obviously effected her credibility and is information that defense counsel would have been entitled to. Obviously, defense counsel heard this testimony, but current counsel is unaware of any other information that was turned over to the defense at trial, or since, supporting an inference that Brown was an accomplice or co-conspirator.

The Commonwealth opposed this request. *Respondents' Response to Petitioner's Pre-Inspection Statement* (dated July 23, 2007) (identified on the federal docket as document # 52)(attached as Exhibit E).

This response was similar to the Commonwealth opposition to an earlier discovery request made in the federal litigation. *See Petitioner's Motion for*

Discovery (dated April 2, 2007) (identified on the federal docket as document # 34) (attached as Exhibit F) and *Commonwealth's Response* (dated April 17, 2007), (identified on the federal docket as document # 35) (attached as Exhibit G).

Petitioner does not cite these previous discovery disputes in an effort to relitigate them. Rather, they are offered to show that the Commonwealth has steadfastly refused through the years of litigation to provide him with the discovery he has sought. It was not until the Commonwealth's exercise of "good faith" (*CR*, 34) in disclosing the missing eight pages and the Carla Brown Statement, that he has finally secured these materials, and of course filed within the requisite sixty-days of receiving them. Thus, the Commonwealth's resistence to discovery is relevant to show the obstacles that Mr. Johnson has faced and the diligence shown by him.

1. Time Bar

Defense counsels reliance on the prosecutor's assurance that all exculpatory information had been provided pre-trial, combined with the Commonwealth's failure to provide the Brown Statement until September 2014, overcomes the PCRA time bar. Indeed, the exceptions to the time bar include a contention that there was "governmental interference" with the ability to file the claim within the original one year limitations period. *See* 42 Pa.C.S. § 9545(b)(1)(i).

The governmental interference exception conveys jurisdiction on a court to

consider an otherwise untimely petition if "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." *Id.* If, as Petitioner contends, he is able to prove that the Brown Statement was withheld by the Commonwealth until almost twenty years after trial, such withholding meets the terms of this exception.

2. Successive Petition Bar

The Commonwealth asserts that Mr. Johnson cannot overcome the successive Petition bar, under which he must show either innocence, or that his trial was "so unfair that a miscarriage of justice occurred which no civilized society could tolerate." *CR*, 20. Mr. Johnson is innocent, but we do not need to meet that more difficult burden, as the claims discussed in this pleading implicate the second ground for overcoming the serial petition bar.

Although the Attorney General correctly identifies a miscarriage of justice as permitting a serial petition, he fails to provide any explication of how one meets that standard. As the following shows, Petitioner easily meets it.

Pennsylvania's "miscarriage of justice" standard has its origins in

Commonwealth v. Lawson, 549 A.2d 107 (Pa. 1988).[16] In *Lawson*, the Court held that a "technical" violation of Pennsylvania's statutory speedy trial rule (then-Rule 1100) (*i.e.*, that the trial commenced a few days after the time set forth in the Rule) would not constitute a miscarriage of justice because the claim did not implicate constitutional rights, was merely a "procedural technicality" and did not affect the fairness of the proceedings: "[T]he petitioner does not attack the fairness of the trial that resulted in his conviction .... What he seeks to do is ... rel[y] on a procedural technicality." *Lawson*, 549 A.2d at 112.

In contrast, where, as here, the claim alleges constitutional violations which are not mere "procedural technicalities"; and the violations affect the reliability, fairness and truth-seeking function of the proceedings, the petitioner has demonstrated a miscarriage of justice under *Lawson*:

> [T]he phrase "miscarriage of justice" is expressive of, and synonymous with the standard of "prejudice" enunciated in *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973 (1987). A miscarriage of justice, like prejudice, can only occur where it is demonstrated that a particular omission or commission was so serious that it undermined the reliability of the outcome of the proceeding. Where a conviction can be shown to result from a breakdown in the adversary process, the conviction rendered is unreliable. Such a conviction is obviously prejudicial to the defendant and, if allowed to stand, is a miscarriage of justice.

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[16] *See, e.g.*, *Doctor v. Walters*, 96 F.3d 675, 682-83 (3d Cir. 1996); *Lambert v. Blackwell* , 134 F.3d 506, 520-21 (3d Cir. 1997); *Hull v. Kyler*, 190 F.3d 88, 101 n.4 (3d Cir. 1999) (each discussing the *Lawson* standard).

Lawson, 549 A.2d at 112 (Papadakos, J., concurring); *accord Doctor*, 96 F.3d at 682 (*quoting* the above passage); *Lambert*, 134 F.3d at 520-21 (same); *Hull v. Kyler*, 190 F.3d at 101 n.4: (*quoting Lawson*, 549 A.2d at 112: "[L]est the bar think that a new standard is being announced," the *Lawson* opinion reiterated, "prejudice" and "miscarriage of justice" are "one in the same.").

The *Lawson* petitioner was seeking to litigate an ineffective assistance of counsel claim for failure to raise the statutory speedy trial violation. *Pierce*, cited by Justice Papadakos in his *Lawson* concurrence, was itself an ineffective assistance of counsel case, wherein the Pennsylvania Supreme Court held that such claims are governed by the Sixth Amendment standard described in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Pierce*, 527 A.2d 973, 976 (Pa. 1987). Thus, the *Pierce* "prejudice" standard – which *Lawson* explained is identical to "miscarriage of justice" – is also identical to the Sixth Amendment "prejudice" standard. In short, a Sixth Amendment ineffective assistance of counsel claim amounts to a miscarriage of justice if it is prejudicial, which is itself an element of the Sixth Amendment claim. And, because the prejudice prong of *Strickland* is co-extensive with the materiality element of a *Brady* claim,[17] a Pennsylvania miscarriage of justice is synonymous with

[17] *Strickland*'s prejudice standard and the materiality standard under *Brady v. Maryland*, 373 U.S. 83 (1963) are co-extensive. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

a material *Brady* violation.

Accordingly, since *Lawson*, Pennsylvania's courts have consistently found a "miscarriage of justice" in cases of constitutional error – because constitutional error constitutes a miscarriage of justice as defined by Pennsylvania's courts, including violations of *Brady* presented in a serial petition.[18]

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[18] *See Commonwealth v. Bazemore*, 614 A.2d 684, 686 (Pa. 1992) (error under the Due Process and Confrontation Clauses of the United States Constitution "would clearly result in a miscarriage of justice."); *Commonwealth v. Huffman*, 638 A.2d 961, 963 (Pa. 1994) (insufficient jury instruction on intent constituted a miscarriage of justice, "[p]ermitting such a faulty verdict to stand would be to tolerate a miscarriage of justice," because the instruction relieved the Commonwealth of its due process obligation to "prove all of the elements of a crime beyond a reasonable doubt.") ; *Commonwealth v. Santiago*, 591 A.2d 1095 (1991) (en banc) (a violation of due process under *Brady* . . .constitutes a "miscarriage of justice" when the withheld evidence is "material."); *Commonwealth v. Hoyman*, 561 A.2d 756, 757-759 (Pa. Super. Ct. 1989) (attorney's failure to pursue a direct appeal "is a demonstrated miscarriage of justice within the meaning of Lawson," because the right to effective assistance of counsel on appeal is a constitutionally protected right, and the denial of that right accordingly constitutes a miscarriage of justice); *Commonwealth v. Romansky*, 702 A.2d 1064, 1065-67 (Pa. Super. Ct. 1997) "when the Commonwealth uses false testimony to obtain a conviction, a miscarriage of justice has occurred" because the due process requirements of *Brady* has been violated); *Commonwealth v. Williams*, 660 A.2d 614, 619 (Pa. Super. Ct. 1995) (failure "to adhere to the terms of [a] plea agreement" would "provide grounds for PCRA relief [on a successive petition] as it would be a miscarriage of justice for a person to [so] relinquish cherished constitutional rights based on a promise that was not kept."); *Commonwealth v. McFadden*, 587 A.2d 740, 742 (Pa. Super. Ct. 1991) (counsel's failure to request an adequate jury instruction on self-defense constituted a "miscarriage of justice [under] ... Lawson." because such ineffective assistance of counsel implicated "the 'truth determining process'" and therefore was prejudicial and a miscarriage of justice, warranting relief on the petitioner's third PCRA petition. 587 A.2d at 741); and *Commonwealth v. Ryan*, 575 A.2d 949, 951 (Pa. Super. Ct.

When the allegations before the Court regarding this claim are compared with the cases cited in the above footnote, it is unquestionable that Mr. Johnson presents a far more troubling instance of a miscarriage – prosecutorial withholding of a witness statement that would have been used to impeach the Commonwealth's key witness on vital points, thus impacting the truth-determining process of the trial.

3. Alleged Undue Delay

At various points in its *Response*, the Commonwealth invokes the portion of the PCRA that permits dismissal of an otherwise meritorious petition if a delay in presenting it causes the Commonwealth prejudice in either its response to the petition, or in a subsequent retrial. *CR*, 14, 20-22, 40-42, 84, 92 & n.36.[19]

When a claim is based on the withholding of exculpatory evidence, as is this claim regarding the *CBS*, Petitioner can only prevail if he proves that the

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1990) (miscarriage found in a successive PCRA action, when a guilty plea was unconstitutional because the plea colloquy did not establish an adequate factual basis for the plea and did not establish a knowing and intelligent waiver of rights, noting that such successive petitions will be heard on the merits if the petitioner establishes a "miscarriage of justice," and concluded that the defendant's allegations of constitutional error "establish[ed] that a miscarriage of justice may have occurred.").

[19]In its footnote 36, the Commonwealth acknowledges that a ruling on the alleged delay must await its filing of a motion seeking dismissal on that basis. No such motion has been filed. Petitioner will obviously respond to such a motion if and when it is filed. For now, he explains how he is not precluded from review or relief on the basis of the alleged delay.

Commonwealth improperly failed to provide it as required by due process of law and statute. If he prevails on these points, as he expects he will, the Commonwealth cannot seriously argue that relief would be precluded for his failure to not bring the claim to court before the exculpatory information was finally released. If Mr. Johnson waited an undue amount of time to file, **after** obtaining the exculpatory evidence, then the Commonwealth might have a point. As matters stand with respect to this claim for relief – in which Petitioner filed *Supplement 3*, regarding the *CBS* within sixty-days of release of the *CBS* – the delay in bringing this claim to court is fully attributable to the Commonwealth's suppression.

II. THE WITHHELD FACTS THAT BROWN GAVE MULTIPLE PRIOR ORAL STATEMENTS TO THE POLICE, AND THE ON-GOING FAILURE TO DISCLOSE THEM, AS EVIDENCED BY THE DILLARD STATEMENT

The details of the Dillard Statement and its materiality are set forth in the *Petition*, ¶ ¶ 46-49, and will not be repeated here. Instead, Petitioner will reply to the *Commonwealth's Response*, 59-61.

A. The Claim is Timely

The Commonwealth contends that this claim is untimely because Dillard's identity and involvement with the case was disclosed: "Because Johnson was aware of Dillard's identity at the time of trial, he cannot plead and prove that he could not have discovered this information previously through the exercise of due diligence."

CR, 59.

For the same reasons described above with respect to the Carla Brown Statement, the Commonwealth's open file policy – with its implicit assurance that all *Brady* information was disclosed before trial – defeats this timeliness argument. The Dillard Statement reveals several facts that the Commonwealth had a constitutional duty to disclose before trial, including: 1) Brown provided several versions of the events of the night of Mr. Williams' death, which the police did not believe to be truthful (*Dillard Statement*, ¶ 5); and 2) the police "had to work on her" until "she finally gave us a truthful statement about what had really happened when Tarajay was killed" (*id.*, ¶ ¶ 5, 8).

Even taking the phrase "worked on" by the police in a benign light, the fact that Brown spoke to the police on multiple occasions should have been disclosed pursuant to *Brady*, as should have the content of the statements she gave before giving the one that the police believed to be true. Such statements were inconsistent with the ultimate statement that the police believed was truthful, and thus constituted impeachment evidence that the Commonwealth was obligated to disclose. *See*, *e.g.*, *United States v. Bagley,* 473 U.S. 667, 676 (1985) ("Impeachment evidence . . . as well as exculpatory evidence, falls within the *Brady* rule"). These prior inconsistent statements also would have not inculpated Petitioner, thus they unquestionably

constituted exculpatory evidence that the Commonwealth was subject to disclose pursuant to *Brady*.[20]

Implicit in the Commonwealth's timeliness argument is that because Dillard's name was known to Petitioner pre-trial, the information contained in the Dillard Statement was reasonably available to him, and thus could have been discovered pre-trial. This argument, however, misses the point. It is not Dillard's involvement that was suppressed – it was the prior interviews and their contents that were hidden, and, with respect to what Brown said in those multiple interviews, continue to be hidden.

In any event, the Commonwealth's position is based on the same argument rejected by *Banks*, *Strickler*, and Judge Jones in his earlier opinion: "Johnson

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[20]Attorney Muller would have made good use of this information had it been disclosed:

> The declaration from former Detective Dillard, which I am advised was attached as an exhibit to Mr. Johnson's pending PCRA pretition, dated August 5, 2013, indicates that "officers had to work on her [Brown] over the course of a few months to get her to tell the truth about what happened to Tarajay [the victim]." This declaration, therefore, strongly suggests that Ms. Brown gave multiple interviews to the police, and that her earlier accounts of that evening contradicted her preliminary hearing and trial testimony. This is additional evidence, withheld from me before, during and after trial, that I would have used to impeach Carla Brown and possibly the interrogation techniques used by the police to elicit what they believed to be the "truth."

Muller Declaration, ¶ 6.

reasonably relied on the government's open file policy and other representations that it had fulfilled its duty to disclose such [*Brady*] evidence." *Johnson v. Mechling*, 541 F.Supp.2d at 685-686. This rule makes good sense because absent it, the Commonwealth would be encouraged to not disclose *Brady* information and to run out the clock on potential litigation of *Brady* violations. But, such a rule would be inconsistent with Due Process:

> The State here nevertheless urges, in effect, that "the prosecution can lie and conceal and the prisoner still has the burden to ... discover the evidence, so long as the "potential existence" of a prosecutorial misconduct claim might have been detected . . . **A rule thus declaring "prosecutor may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process**.

Banks v. Dretke, 540 U.S. at 696.

B. The Claim is Not Barred by the Serial Petition Bar or by any Purported Undue Delay in Filing

For the same reasons as those set forth with regard to the Carla Brown Statement (*see* above at pages 21-24), this claim is based on a miscarriage of justice, as defined by Pennsylvania Courts. In short, it relates to yet another violation of due process of law – the failure to provide to the defense impeachment material – which impacted the jury's assessment of whether Carla Brown, told the truth at trial. Such an impact meets the miscarriage standard.

For the same reasons as those set forth above with regard to the Carla Brown

Statement (*see* above at page 25), the delay in bringing this claim to court is attributable to the Commonwealth's suppression. In fact, the suppression continues, as counsel has yet to be provided with any inkling of the content of Brown's earlier statements to the police – aside, of course, from Dillard's belief that they were "false."

C. The Commonwealth's Argument on the Merits

On the merits of the claim, the Commonwealth asserts that it did not hide the fact that Brown spoke to the police on several occasions before providing her inculpatory version of events because this information was contained in the March 27, 1996 police report. *CR*, 60. This is a boot-strap assertion does not advance the inquiry, because the question of whether that statement was provided to the defense is obviously contested as well. Moreover, it does not address the substance of her prior versions – *i.e.*, those that the police choose not to believe – which have still not been disclosed to any lawyer for Mr. Johnson.

In a similar vein, the Commonwealth points to Brown's preliminary hearing testimony, in which she admits that she did not initially cooperate with the police. *CR*, 61. Again, this is not the same as what Dillard has revealed: that she spoke to the police over a period of months and provided several "false" versions of the events. That is the information that should have been disclosed, along with the content of the

"false" information. Indeed, her preliminary hearing testimony (that she did not cooperate) can reasonably be read to mean that she did not even speak with the police. That is obviously far different from what Dillard reports. She spoke to the police multiple times, and provided any number of versions of the events that were exculpatory as to Mr. Johnson and that would have impeached Brown's credibility.

The Commonwealth also responds that Petitioner has "misinterpreted" Detective Dillard's meaning. It is true that Detective Dillard's statement to agents of the Attorney General who interviewed him on August 29, 2014, says that, but he fails to explain in what way he was misunderstood. In any event, Petitioner is not relying on any subjective interpretation of Dillard's declaration; Petitioner relies on the facts. According to Dillard, Brown gave multiple statements to the police which did not inculpate Mr. Johnson. That is now established fact. What is not established is why they were never provided to the defense – to this day – and what those statements said. This is a clear violation of the prosecution's duty to disclose exculpatory/impeachment evidence.

III. THE SUPPRESSED RELATIONSHIP BETWEEN DETECTIVE DUFFIN AND VICTORIA DOUBS

Again, the Commonwealth interposes a procedural and merits defense to the claim regarding the undisclosed family-like relationship between the assigned

detective and witness Victoria Doubs that was presented in *Supplement 1*.

There is nothing different about the Commonwealth's procedural defenses offered with regard to this claim, and therefore Petitioner responds in the same way. If this Court finds that such a relationship existed, and that it would have had a material impact on the jury's assessment of the credibility of this witness, then it should have been disclosed pre-trial.[21] The Commonwealth's failure to disclose it, along with its open file assurances, defeats each of the procedural defenses it asserts.

Petitioner, however, takes particular issue with the Commonwealth's assertion that because Doubs is deceased it cannot respond to this claim because it cannot

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[21]Had it been disclosed, trial counsel Muller, again, would have used it to impeach the Commonwealth's case:

> The *Supplement* dated March 3, 2014, addresses evidence showing that trial witness Victoria Doubs and the assigned detective, Kevin Duffin, had a close family-like relationship. In particular, two declarations attached to the *Supplement* -- from James Bowman and Freddie Jay Williams, who have identified themselves respectively as the brother of Ms. Doubs and Detective Duffin -- describe the closeness of the relationship between Doubs and Detective Duffin. Although I cannot attest to the accuracy of these declarations, I can state that if they are true, and such a relationship existed between this witness and the assigned detective, I would have used this information to impeach Ms. Doubs, and the Commonwealth's case, generally. I had no inkling at trial that such a relationship existed.

Muller Declaration, ¶ 5.

obtain her subjective input as to what effect the relationship with Duffin had on her testimony. *CR*, 82 (identifying her as "the only person to actually know what her state of mind was regarding her relationship with Detective Duffin"). This is a true statement, however, it is utterly beside the point. A due process violation, such as that alleged here, requires an objective analysis of how the jury would have evaluated her testimony in view of the relationship. Even assuming the best case for the Commonwealth – that she would have said that it did not effect her testimony at all – the jury would still be called upon to evaluate the veracity of that perspective. This is an objective test. *See e.g. United States v. Jordan*, 316 F.3d 1215, 1252 ("under *Brady,* the government need only disclose during pretrial discovery (or later, at the trial) evidence which, in the eyes of a neutral and objective observer, could alter the outcome of the proceedings"); *Roberts v. Howton*, 13 F.Supp.3d 1077, 1107 (D. Or. Apr. 9, 2014) ("The test for materiality . . . is an objective one: whether there is a reasonable probability that but for the failure to disclose the *Brady* material" the outcome would have been different). Thus, in evaluating a *Brady* claim, the fact that the witness said it had no impact on her testimony is not the test. Rather, it is the objective "reasonable probability" test that controls.

On the merits, the Commonwealth concedes as it must that Petitioner presents a material issue of fact that can only be resolved at an evidentiary hearing. *CR*, 84.

IV. THE MISSING FIRST EIGHT PAGES OF POLICE REPORTS

The first eight pages of police reports contain two exculpatory points: that Carla Brown was identified as a suspect and that there were no witnesses to the shooting – the latter contradicting Brown's trial testimony. These two exculpatory points were not developed at trial, as one would expect if this information was in possession of the trial counsel. *See Supplement 2*.

The *Commonwealth's Response* raises no new procedural arguments, and therefore Petitioner will rely on the previous arguments set forth above.

On the question of whether the pages were disclosed, the Commonwealth raises an issue of material fact suggesting that it is unbelievable that trial counsel would not have requested these pages. Whether this is believable, or not, is for this Court to determine after a hearing.

CONCLUSION

For all of the above reasons, those contained in the *Petition* and each of the three *Supplements*, and based upon the entire record of this litigation, the Court should grant the following interim relief:

A. Entertain oral argument on the above claims, including whether Petitioner is entitled to an evidentiary hearing;

B. Should grant an evidentiary hearing on each claim.

Following the hearing, the Court should vacate Petitioner's convictions and conduct new trial proceedings.

Respectfully Submitted,

Michael Wiseman
PO Box 120
Swarthmore, PA
Wiseman_Law@Comcast.Net
215-450-0903
Counsel for Petitioner
Lorenzo Johnson

Dated: Swarthmore, PA
March 6, 2015

Certificate of Service

I, Michael Wiseman, hereby certify that on this 6th day of March, 2015 I served a copy of the foregoing upon the following person in the manner indicated:

William R. Stoycos, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Appeals and Legal Services Section
16th Floor, Strawberry Square
Harrisburg, PA 17120

Michael Wiseman

Exhibit A

VERIFICATION

I, Lorenzo Johnson, do hereby verify pursuant to Pa.R.Crim.P. 901(b), and subject to the penalty for perjury, that the facts and allegations set forth in a PCRA Petition dated August 5, 2013; a Supplement to the Petition, dated March 3, 2014; a Second Supplement to the Petition dated August 7, 2014; and a Third Supplement to the Petition dated November 12, 2014, each filed by my counsel, Michael Wiseman, are true and accurate to the best of my knowledge, information and belief.

Lorenzo Johnson

Dated: February 23, 2015
SCI – Mahanoy, Frackville, PA

Exhibit B

DECLARATION OF DEANNA MULLER, ESQ.
PURSUANT TO 28 U.S.C. § 1746 AND 18 PA C.S. § 4904

I, Deanna Muller, do hereby declare and verify subject to the penalty for perjury that the following is true and correct.

1. My name is Deanna Muller. I am an attorney admitted to practice law in Pennsylvania since 1994, when I was hired by the Dauphin County Public Defender. I am currently a Chief Deputy Public Defender in that Office. I have been asked by counsel for Lorenzo Johnson to complete this Declaration regarding particular issues that are before the Court of Common Pleas.

2. Prior to completing this declaration, I reviewed the following: my office's file from its representation of Mr. Johnson; the1997 trial testimony of Carla Brown and her preliminary hearing testimony; two pleadings styled: *Supplement to Petition for Relief Under the PCRA* (*Supplement)*; and *Third Supplement to Petition for Relief Under the PCRA* (*Third Supplement*) (dated March 3, 2014, and November 12, 2014, respectively); a declaration completed by former Harrisburg Police Department Detective Robert Dillard; and an October 7, 1996 letter from E. Christopher Abruzzo, the Deputy Attorney General who tried the case for the Commonwealth to Edward Brandenstein, Esq., the attorney in my Office who represented Mr. Johnson in pre-trial litigation.

3. After Mr. Brandenstein left the Public Defender's Office in or about October, 1996, Mr. Johnson's case was reassigned to me for trial. I recall the case well, as it was my first homicide trial.

4. Mr. Johnson's current lawyer provided me with the *Third Supplement* on February 12, 2015. It contains as an exhibit a statement dated March 27, 1996, signed by trial witness Carla Brown. I can state with confidence that I had never before seen that statement prior to it being provided to me by Mr. Johnson's current counsel on February 12. I am certain that the statement was not provided to me either pre-trial or during trial for the following reasons: 1) I do not recall having seen it; 2) it is not contained in the file maintained by my office on this case; 3) I wrote to Mr. Johnson on March 20, 2006 in response to his request for a copy of any statements made by Ms. Brown and my response was "Carla Brown did not make a written statement prior to trial;" 4) neither myself nor counsel for co-defendant Corey Walker, Mr. Shugar, used the statement to impeach Ms. Brown, although there are a number of points in the statement that contradict Ms. Brown's trial and preliminary hearing testimony, such that I would have used it to impeach her; and 5) Brown's statement was never marked or identified on the trial record. Regarding this last point, during my tenure at the Public Defender's Office, it has been common practice for the prosecution to elicit from its witnesses the fact that they provided a written statement to the police, as a way of bolstering the witnesses' testimony, and then identifying the statement on the record as a Commonwealth exhibit. Therefore, the absence of any mention of it on the trial record, is strong confirmatory evidence that it was not provided to me pre-trial or during trial.

5. The *Supplement* dated March 3, 2014, addresses evidence showing that trial

witness Victoria Doubs and the assigned detective, Kevin Duffin, had a close family-like relationship. In particular, two declarations attached to the *Supplement* -- from James Bowman and Freddie Jay Williams, who have identified themselves respectively as the brother of Ms. Doubs and Detective Duffin -- describe the closeness of the relationship between Doubs and Detective Duffin. Although I cannot attest to the accuracy of these declarations, I can state that if they are true, and such a relationship existed between this witness and the assigned detective, I would have used this information to impeach Ms. Doubs, and the Commonwealth's case, generally. I had no inkling at trial that such a relationship existed.

6. The declaration from former Detective Dillard, which I am advised was attached as an exhibit to Mr. Johnson's pending PCRA pretition, dated August 5, 2013, indicates that "officers had to work on her [Brown] over the course of a few months to get her to tell the truth about what happened to Tarajay [the victim]." This declaration, therefore, strongly suggests that Ms. Brown gave multiple interviews to the police, and that her earlier accounts of that evening contradicted her preliminary hearing and trial testimony. This is additional evidence, withheld from me before, during and after trial, that I would have used to impeach Carla Brown and possibly the interrogation techniques used by the police to elicit what they believed to be the "truth."

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information and belief, subject to 28 U.S.C. § 1746 and 18 Pa.C.S. § 4904.

Deanna Muller

Dated: Harrisburg, PA
February 20, 2015

Exhibit C

DECLARATION OF EDWARD G. BRANDENSTEIN, ESQ.
PURSUANT TO 28 U.S.C. § 1746 AND 18 PA C.S. § 4904

I, Edward G. Brandenstein, do hereby declare and verify pursuant to the penalty for perjury that the following is true and correct.

1. I am an attorney admitted to practice law in the Commonwealth of Pennsylvania. I am employed by the law firm of Meyer, Darragh, et al, with offices in Pittsburgh. I graduated from law school in 1994 and gained employment with the Office of Public Defender for Dauphin County, Pennsylvania. In that capacity I was involved in the representation of Lorenzo Johnson with regard to homicide charges lodged against him in 1995. I left the office before the case went to trial. I have been asked by current counsel for Mr. Johnson to provide this declaration regarding certain discovery issues that I understand have arisen. This declaration was prepared by counsel for Mr. Johnson. I have reviewed it, and it is accurate.

2. I have reviewed the cover jacket to the Public Defender file on this case (attached as Exhibit 1 to this declaration). I observed my handwritten notations on the jacket. These notes reflect my attempt at obtaining discovery from the Office of Attorney General. The fact that I recorded my attempts to obtain discovery tells me that I must have been having a difficult time making contact with AAG Abruzzo to obtain discoverable material and/or receiving a response from Mr. Abruzzo that I felt it was necessary to document my attempts. The notes on the file tell me that I had a telephone conversation with Chris Abruzzo on 8/16, that I unsuccessfully attempted to obtain discoverable material from him

on 8/19 (no luck), I called Mr. Abruzzo on 8/22 and left a message for a return call (L.M.), and called on 8/23 and left a message for a return call (L.M.). I assume that I must have made additional attempts to contact Mr. Abruzzo between August 23 and the October 4 discovery conference, but do not see those efforts memorialized on the file.

3. I have reviewed what has been identified to me as Exhibit A to the Third Supplement to PCRA filed by Mr. Johnson (statement of Carla Brown dated 3/27/96 taken by Det. Duffin and Inv. Dillard). It seems incomprehensible to me that Chris Abruzzo would have specifically identified the other witness statements that were produced in discovery in his October 7, 1996 letter transmitting discovery (which I have also reviewed, and is attached as Exhibit 2 to this Declaration), but omitted listing the witness statement of Carla Brown, had Carla Brown's witness statement been provided. I have now read Carla Brown's statement, and I do not recall ever having read the statement before. Her statement contains significant areas for impeachment of Brown, which I would certainly have used if I had tried the case.

4. Had Carla Brown's statement been provided to the defense prior to trial, it would have been in the file maintained by the Public Defender's Office.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information and belief, subject to 28 U.S.C. § 1746 and 18 Pa.C.S. § 4904.

Edward G. Brandenstein, Esq.

Dated: February 18, 2015
Pittsburgh, PA

Exhibit 1

PLEA BARGAINS

INTERVIEWS

OFFICE

DCP

LETTER

TELEPHONE w/abruzzo 8/16, attempted discovery 8/19. No luck, 8/22 L.M. 8/23 L.M.

WITNESSES

FAMILY

OTHER

PAROLE:

OGS 07W328 Johnson, Leonard

FILE NUMBER CLIENT'S NAME

CONTINUANCE

DATE	REQUESTED BY			JUDGE	D.A.	DEFENDER	REASON
11/5/96	Δ	☐ COUNTER	☒ JUDGE	Hoover		DFW	to 1/6/97
1/3/97	Δ	☐ COUNTER	☒ JUDGE	"		"	to 2/10/97
__/__/__		☐ COUNTER	☐ JUDGE				
__/__/__		☐ COUNTER	☐ JUDGE				
__/__/__		☐ COUNTER	☐ JUDGE				
__/__/__		☐ COUNTER	☐ JUDGE				
__/__/__		☐ COUNTER	☐ JUDGE				

RULE 1100 WAIVER

DATE			THRU
__/__/__	☐ COUNTER ☐ JUDGE		
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__/__/__	☐ COUNTER ☐ JUDGE		

CAPIAS

DATE	JUDGE	PROCEEDING MISSED	DATE SERVED
__/__/__			__/__/__
__/__/__			__/__/__
__/__/__			__/__/__
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__/__/__			__/__/__

* REMARKS/ADDITIONS

OFFICE OF THE PUBLIC DEFENDER, DAUPHIN COUNTY, PENNSYLVANIA

PROBATION/PAROLE REVOCATION

☐ COUNTY ☐ STATE DATE OF NOTICE __/__/__

GAGNON I: ☐ TECHNICALS ☐ NEW OFFENSE

DATE __/__/__ TIME _____ HEARD BY _____ DEFENDER _____

DISP: ☐ DISMISSED ☐ H.F.C. ☐ RELEASED ☐ DETAINED CONDS: _____

WITNESSES: _____

GAGNON II: DATE __/__/__ TIME _____ JUDGE _____

☐ FULL BOARD ☐ HEARING EXAMINER _____ DEFENDER _____ D.A. _____

DISP: _____

STATE NOTICE RECEIVED __/__/__ MOTION TO MODIFY SENTENCE ☐ YES ☐ NO

APPEAL ☐ YES ☐ NO DATE DUE __/__/__ FILE NO. _____

GAGNON I: ☐ TECHNICALS ☐ NEW OFFENSE

DATE __/__/__ TIME HEARD BY _____ DEFENDER _____

DISP: ☐ DISMISSED ☐ H.F.C. ☐ RELEASED ☐ DETERMINED CONDS: _____

WITNESSES: _____

GAGNON II: DATE __/__/__ TIME _____ JUDGE _____

☐ FULL BOARD ☐ HEARING EXAMINER _____ DEFENDER _____ D.A. _____

DISP: _____

STATE NOTICE RECEIVED __/__/__ MOTION TO MODIFY SENTENCE ☐ YES ☐ NO

APPEAL ☐ YES ☐ NO DATE DUE __/__/__ FILE NO. _____

☐ WAIVED ☐ REDUCED TO SUMMARY ☐ OTHER

☒ H.F.C. ☒ PRISON ☐ BAIL BAIL AMOUNT _____

PRELIMINARY HEARING WITNESSES

PROSECUTION Claude Brown

DEFENCE

REMARKS:

ALIBI AND/OR INSANITY NOTICE

☐ YES ☐ NO COMMONWEALTH'S RESPONSE DATE DUE __/__/__

OTHER PRETRIAL MATTERS

DATE DUE __/__/__

☐ YES ☐ NO MOTION TO MODIFY SENTENCE DATE FILED __/__/__

☐ GRANTED ☐ DENIED __/__/__

RESENTENCING: _____

DEF. PLACE OF DETENTION _____

APPEAL

☐ YES ☐ NO DATE DUE __/__/__ FILE NO. _____

Exhibit 2

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

October 7, 1996

THOMAS W. CORBETT, Jr.
ATTORNEY GENERAL

Reply To:
1600 Strawberry Square
Harrisburg, PA 17120
(717) 783-3014

Edward Brandenstein, Esquire
Dauphin County Public Defender's Office
Veteran's Memorial Building
Front and Market Streets
Harrisburg, PA 17101

Re: Commonwealth vs. Lorenzo Johnson
59 CD 1996

Dear Mr. Brandenstein:

Pursuant to our discovery conference of October 4, 1996, I provided you copies of the following documents:

1/ The criminal information.
2/ The results of your client's polygraph examination, as well as the statements he made thereto.
3/ Your client's prior record.
4/ The statement of Daryl Williams.
5/ The statement of Brian Ramsey.
6/ The statement of Jesse Davis.
7/ A copy of the coroner's report.
8/ A copy of the pathologist's report.
9/ An inventory list of all evidence recovered at the scene.
10/ The police report of Officer Laura Davis.
11/ The police report of Officer Leroy Lucas.
12/ The police report of Officer Steven Harman.
13/ The police report of Investigator Robert Dillard (two reports).
14/ The police report of Detective Kevin Duffin.

Should I receive any additional discoverable evidence I will forward it to you immediately.

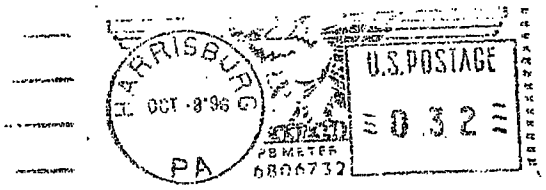
In the meantime, please notify me should you have any questions or comments concerning the materials turned over to you at the time of our discovery conference.

Sincerely,

E. Christopher Abruzzo
Deputy Attorney General
Criminal Prosecutions Section

ECA:gcc
cc: BCI File/CPS File/

OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA
STRAWBERRY SQUARE
HARRISBURG, PA. 17120



Edward Brandenstein, Esquire
Dauphin County Public Defender's Office
Veteran's Memorial Building
Front and Market Streets
Harrisburg, PA 17101

Exhibit D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	04-cv-1564
Petitioner,	:	John E. Jones, III, USDJ
v.	:	Electronically Filed
NEAL MECHLING, Superintendent, State Correctional Institution at Fayette,	:	
Respondent.	:	

PETITIONER'S PRE-INSPECTION STATEMENT

This Court has ordered production of a number of law enforcement files for *in camera* inspection. This inspection (scheduled for July 24, 2007) is being made to address Petitioner's discovery requests related to any consideration provided to trial witness, Victoria Doubs, that was not disclosed to trial counsel. Petitioner offers this pre-inspection statement to briefly reiterate what it is he seeks and what he requests that the Court be on the look-out for.

Petitioner claims that due process was violated when the trial prosecutor failed to apprise Petitioner's trial counsel of the existence of a plea agreement between Commonwealth witness Victoria Doubs and the Dauphin County District Attorney. The agreement may have taken any number of forms, from a concrete, signed written agreement, to an implicit understanding between law enforcement and Ms. Doubs. Even in the absence of an actual or implicit agreement, she may have understood or believed that her testimony could have had an impact on her to-be-imposed sentence, and there may be evidence in the files evidencing that belief.

Accordingly, Petitioner requests the Court to be on alert for any evidence in the file that Doubs received any consideration; that there was a promise to her to that effect; that there was an implicit promise or understanding communicated; or evidence that she – even unilaterally – had an expectation of leniency.[1]

Counsel has one additional request. While conducting its *in camera* review, the Court should also be alert to the presence of any other similar due process violations, even if they are not pled in the Petition before the Court. After all, the Writ of Habeas Corpus "plays a vital role in protecting constitutional rights," Slack v. McDaniel, 529 U.S. 473, 483 (2000), and is the "highest safeguard of liberty," Smith v. Bennett, 365 U.S. 708, 712-13 (1961). The Writ has been variously described as "interpos[ing] the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action, Reed v. Ross, 468 U.S. 1, 10 (1984); "[as] a fundamental safeguard against unlawful custody" Withrow v. Williams, 507 U.S. 680, 697 (1993) (O'Connor, J., concurring); and as a "prompt and efficacious remedy for whatever society deems to be intolerable restraints." Fay v. Noia, 372 U.S. 391, 401-02 (1963).

---

[1]Commonwealth v. Strong, 761 A.2d 1167, 1173-74 (Pa. 2000) is instructive as to the various forms that the consideration may have taken. There, the District Attorney testified in post-conviction proceedings that "it was his practice as District Attorney of Luzerne County . . . to avoid entering into plea agreements until after receiving the cooperation. Rather, it was his 'normal course to indicate that truthful cooperation would get consideration.' [The prosecutor] acknowledged that Brady concerns factored in to this policy of plea agreements because the jury would have to be apprised of any such agreement. . . He acknowledged that a fair statement would be that [the witness] testified in hopes of getting consideration for himself."

The Supreme Court "note[d] that the absence of an ironclad contract . . . is not dispositive [of the Brady claim]. . . [W]e find the record establishes the existence of an understanding between the Commonwealth and [the witness] that he would be treated with considerable leniency in exchange for his testimony . . . This understanding although not articulated in an ironclad agreement, was sufficient to implicate the due process protections of Brady."

One such potential due process violation comes to mind. In her testimony, Victoria Doubs stated that Carla Brown (the witness who alleged to have witnessed the shooting, who placed Petitioner near the scene and who testified that Petitioner was involved in an argument with the victim and his codefendant in the bar just prior to the shooting) admitted to her that she (Brown) was an accomplice to the killing:

> Q: What did you tell Detective Loudermilk about your contact with Carla?
>
> A: I said, well, tell me what went on the night of – that Taraja got killed. And she [Brown] said – I said, did he do it. And she was like, I'm going to tell you like this. She said he gave me a couple of rocks [i.e. crack cocaine] and **I took him in the alleyway**. . .
>
> Q: At that time did she say anything to you about she was the person that lured Taraja Williams into that alley?
>
> A: **She said that Corey [the co-defendant] asked her to take Taraja into the alleyway**.

NT 227-28.

In view of Doubs' testimony that she told a detective that Brown told her that the codefendant, Corey Walker, paid her with "rocks" to take "Taraja into the alleyway" it is clear that there was some evidence in the possession of the police that the primary witness against Petitioner had implicated herself as an accomplice. Her status as an accomplice would have obviously effected her credibility and is information that defense counsel would have been entitled to. Obviously, defense counsel heard this testimony, but current counsel is unaware of any other information that was turned over to the defense at trial, or since, supporting an inference that Brown was an accomplice or co-conspirator.

Accordingly, Petitioner requests that the Court review the file for this evidence as well. To

be sure, if there is such evidence, Petitioner would face procedural challenges to having it heard. However, those challenges should not prevent this Court from airing such evidence, should it exist.

Respectfully Submitted,

/s/ Michael Wiseman

_____

Michael Wiseman
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West – The Curtis Center
Philadelphia, PA 19106
(215) 928-0520
Counsel for Petitioner

Dated: July 20, 2007
Philadelphia, PA

Certificate of Service

I, Michael Wiseman, hereby certify that on this 20th day of July, 2007 I served the foregoing upon the following persons at the addresses indicated, by United States Mail and by e-mail:

Will Stoycos, Esq.
Assistant Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

/s/ Michael Wiseman

_____

Michael Wiseman

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	
Petitioner	:	
	:	Civil No. 04-CV-1564
v.	:	
	:	(Judge Jones)
NEAL MECHLING, et al.,	:	
Respondent	:	

RESPONDENTS' RESPONSE TO
PETITIONER'S PRE-INSPECTION STATEMENT

Respondents hereby object to Petitioner's "pre-inspection statement" filed on July 20, 2007 and respectfully request that this Court reject the solicitations contained therein. In support thereof, Respondents aver the following.

1. Petitioner's "statement" is a request that the Court, during its *in camera* review on July 24, 2007: (a) search for and identify any documents revealing violations of Petitioner's due process rights; and (b) search for and identify documents supporting an inference that Commonwealth witness Carla Brown was an accomplice or co-conspirator in the murder for which petitioner was convicted.

2. This request is obviously improper.

3. It ignores the Court's directive issued in chambers on May 22, 2007 that Respondents produce documents for the sole purpose of allowing the Court to determine whether records exist showing a relationship between Victoria Doubs' testimony in Petitioner's trial and the disposition of two sets of criminal charges

pending against her at the time. Such directive was echoed in the Court's formal Order issued later the same day.

4. It seeks discovery not previously requested by Petitioner in his motion for discovery filed on April 2, 2007.

5. It seeks discovery on an issue not raised in Petitioner's petition for writ of habeas corpus or supporting memorandum of law.

6. It raises a new claim in contradiction to Petitioner's own signed Notice of Election filed on July 27, 2006 in which Petitioner affirmatively, knowingly, and voluntarily chose to proceed with the claims he had previously raised rather than file a new petition:

> I have labeled my petition as a petition for writ of habeas corpus under 28 U.S.C. § 2254. I choose to have the court rule on my petition as filed. I understand that I may be forever barred from presenting in federal court any claim not presented in this petition. I further understand that by doing so I lose my ability to file a second or successive petition absent certification by the Court of Appeals, and that the potential for relief is further limited in a second or successive petition (emphasis added).

7. In requesting the Court to scour the produced records for evidence that might support actual or potential claims of Petitioner, the "statement" asks the Court to perform legal analysis on behalf of the Petitioner, thereby making the Court Petitioner's advocate and Respondents' adversary.

8. This would require disqualification due to an appearance of partiality on the part of the Court. *See* 28 U.S.C. § 455(a); *Liljeberg v. Health Services Acquisition Corp.*,

486 U.S. 847 (1988); *U.S. v. Wecht*, 484 F.3d 184 (3d Cir. 2007); *In re Kensington Intern. Ltd.*, 353 F.3d 211 (3d Cir. 2003); *Haines v. Liggett Group, Inc.*, 975 F.2d 81 (3d Cir. 1992).[1]

9. Because the Court's May 22, 2007 Order precluded Petitioner from conducting the fishing expedition through Respondents' files that he originally sought, he is now asking the Court to do the job for him.

10. To grant Petitioner's request would require the Court to ignore binding caselaw that prohibits such discovery proceedings. *See Strickler v. Greene*, 527 U.S. 263 (1999); *Deputy v. Taylor*, 19 F.3d 1485 (3d Cir. 1994); *Zettlemoyer v. Fulcomer*, 932 F.2d 284 (3d Cir. 1991).[2]

[1] In an act of supreme irony, Petitioner requests that the Court violate Respondents' due process right to a neutral and impartial tribunal in the name of the Due Process Clause.

[2] Given the outrageous nature of Petitioner's request and the obvious intelligence and experience of his counsel, it is difficult to avoid the conclusion that the real purpose in Petitioner's filing of his "statement" was not to obtain the Court's advocacy on his behalf during the *in camera* review, but rather to plant seeds of negativity in the mind of the Court regarding Respondents' conduct of the trial below with the hope that such will influence the outcome of the habeas proceedings to his advantage.

Conclusion

For the foregoing reasons, Respondents request that this Court deny the request contained within Petitioner's "statement."

Respectfully submitted,

_/s/_WILLIAM R. STOYCOS_____
WILLIAM R. STOYCOS
Deputy Attorney General
Attorney I.D. No. 68468
(*Counsel for Respondents*)

Office of Attorney General
Criminal Law Division
Appeals and Legal Services Section
16th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-6348

Date: July 23, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:
Petitioner	:
	: Civil No. 04-CV-1564
v.	:
	: (Judge Jones)
NEAL MECHLING, Superintendent,	:
SCI-Fayette Respondent	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing RESPONDENT'S RESPONSE TO PETITIONER'S PRE-INSPECTION STATEMENT upon the person and in the manner indicated below:

Service by first class mail
addressed as follows:

Michael Wiseman
Defender Association of Philadelphia
Capital Habeas Corpus Unit
The Curtis Center, Suite 545-W
Independence Square West
Philadelphia, PA 19106
(215) 928-0520

_/s/_WILLIAM R. STOYCOS_____
WILLIAM R. STOYCOS
Deputy Attorney General
Attorney I.D. No. 68468
(*Counsel for Appellee*)

Office of Attorney General
Criminal Law Division
Appeals and Legal Services Section
16th Floor, Strawberry Square
Harrisburg, PA 17120
Date: July 23, 2007

Exhibit F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	04-cv-1564
Petitioner,	:	John E. Jones, III, USDJ
v.	:	Electronically Filed
NEAL MECHLING, Superintendent, State Correctional Institution at Fayette,	:	
Respondent.	:	

PETITIONER'S MOTION FOR DISCOVERY
AND
CONSOLIDATED MEMORANDUM OF LAW

Petitioner, LORENZO JOHNSON, hereby moves for discovery in the above captioned matter and in support of this *Motion* states as follows.

PRELIMINARY STATEMENT

1. Pending before the Court is Petitioner's application for a *Writ of Habeas Corpus*. On March 6, 2007 undersigned counsel filed a *Memorandum of Law in Support of the Petition* (hereafter, *Memo*). As noted in the *Memo*, Petitioner believes he is entitled to relief on the first claim discussed therein, i.e. that the evidence against Petitioner was insufficient to sustain the convictions. However, in the event that the Court disagrees, and instead proceeds to rule on the remaining claims, Petitioner presents this *Motion* seeking discovery related to Claim II discussed in the *Memo*.

2. Claim II in the *Memo* sets forth a due process violation related to the prosecution's failure to apprise Petitioner's trial counsel of the existence of a plea agreement between

Commonwealth witness Victoria Doub and the Dauphin County District Attorney.

THE LAW OF DISCOVERY IN HABEAS CASES

3. Rule 6(a) of the *Rules Governing Habeas Corpus Cases Under Section 2254* entitles habeas petitioners to "invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so." Bracy v. Gramley, 520 U.S. 899, 904 (1997); see generally James Liebman & Randy Hertz, Federal Habeas Corpus Practice and Procedure, § 19.4 *Discovery* (4th ed. 2001). Leave to conduct discovery in habeas cases is permitted when "there is a sound basis for concluding that the requested discovery might allow the [petitioner] to demonstrate" he is entitled to relief. Johnston v. Love, 165 F.R.D. 444, 445 (E.D.Pa. 1996); Gaitan-Campanioni v. Thornburgh, 777 F. Supp. 1355, 1356 (E.D. Tex. 1991). "Petitioner need not show that the additional discovery would definitely lead to relief. Rather, he need only show good cause that evidence sought would lead to relevant evidence regarding his petition." Payne v. Bell, 89 F. Supp. 2d 967, 970 (W.D. Tenn. 2000).

4. A habeas petitioner establishes "good cause" for discovery when "specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief." Bracy, 520 U.S. at 908-09 (quoting Harris v. Nelson, 394 U.S. 286, 299 (1969)).[1] Under such circumstances, discovery must be allowed -- "it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry."

[1]Harris led to the adoption of the Rules Governing Section 2254 Cases. In particular, the discovery provisions of Rule 6 are intended to be "consistent with Harris." Advisory Committee's Note on Habeas Corpus Rule 6; Bracy, 520 U.S. at 909.

Id.[2] "The very nature of [habeas proceedings] demands that [they] be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Harris, 394 U.S. at 291.

5. Here, Petitioner has "good cause" for discovery. Petitioner has provided "specific allegations" – in the *Petition* and *Memo*, and as explained below – "show[ing] reason to believe that [he] may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief." Bracy at 908-09. Thus, discovery should be allowed. Indeed, discovery has routinely been granted in cases, such as this one, where it would help "illuminate the issues," Gaitan-Campanioni, 777 F.Supp. at 1356, before the Court.[3]

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[2]Accord McDaniel v. United States District Court, 127 F.3d 886, 888 (9th Cir. 1997) (where Petitioner "presented specific allegations . . .[he] is entitled to discovery"); Marshall v. Hendricks, 103 F.Supp.2d 749, 760 (D.N.J. 2000) ("A court's blanket denial of discovery is an abuse of discretion if discovery is indispensable to a fair development of the material facts") (citations omitted); Johnston v. Love, 165 F.R.D. 444, 445 (E.D. Pa. 1996) (Rule 6's "history makes clear that its purpose is to ensure that the facts underlying a habeas corpus claim are adequately developed, and that it is a court's obligation to allow discovery in cases in which a petitioner has provided a sufficient basis for believing that discovery may be necessary to adequately explore a petitioner's claim for relief." Accordingly, "a court may not deny a habeas corpus petitioner's motion for leave to conduct discovery if there is a sound basis for concluding that the requested discovery might allow him to demonstrate that he has been confined illegally."); Gaitan-Campanioni , 777 F. Supp. at 1356 ("Although discovery is permitted only by leave of the court, the court should not hesitate to allow discovery, where it will help illuminate the issues underlying the applicant's claim.").

[3]Applying these standards, this Court found good cause and granted discovery on two occasions in Abdul-Salaam v. Beard, 02-2124 (M.D. Pa.), slip opinion, July 26, 2004 (document # 33) at 4-10 (permitting depositions and inspection of evidence), and slip opinion, August 11, 2005 (document # 77) at 5-7 (permitting DNA testing). See also, Hawkins v. Beard, No. 02-1678 (E.D. Pa. Mar. 4, 2003) (Dalzell, J.) (order granting discovery); Albrecht v. Horn, No. 99-1479 (E.D. Pa. Jan. 26, 2001) (Kauffman, J.) (order granting discovery in light of claim of innocence); Jones v. Love, 1996 WL 296525, *1, *4, *9 (E.D. Pa. June 3, 1996) (allowing discovery, including depositions of court reporter, to determine status of missing portions of the state court record); Carpenter v. Vaughn, 888 F. Supp. 635, 640 (M.D. Pa. 1994) (noting that discovery, in the form of depositions, had been granted).

DISCOVERY IS APPROPRIATE IN PETITIONER'S CASE

6. In assessing whether Petitioner has established good cause to permit discovery related to the second claim contained in his recently-submitted *Memo*, it is first appropriate to "identify the 'essential elements' of that claim." Bracy, 520 U.S. at 904. Claim II sets forth a violation of due process pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. The elements of a Brady violation exist when the prosecution withholds exculpatory evidence from the defense, and when the withheld evidence is material to guilt. Brady, 373 U.S. at 87 ("the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."). For purposes of the due process clause, evidence of a plea agreement afforded to a witness testifying for the prosecution is deemed "favorable" to the defense. See e.g., Giglio v. United States, 405 U.S. 150, 153-55 (1972).

7. The failure of the prosecution to apprise the defense of the plea agreement between the Dauphin County District Attorney and Victoria Doubs violated due process in multiple respects: she may have had an actual agreement that her testimony would result in favorable consideration; she may have had an implicit agreement to that effect; and even in the absence of an actual or implicit agreement, she may have understood or believed that her testimony could have an impact on her to-be-imposed sentence. See *Memo* at 25-29. In either of these events, Petitioner was entitled to disclosure of the plea agreement in order to permit proper and full cross examination of this witness, and he is entitled to discovery at this time to permit him to prove these contentions.[4]

[4]The state court trial judge ruled on only one aspect of the claim – that there was no formal agreement between Doubs and the Attorney General prosecuting the case. See *Memo* at 31, discussing court's finding. Even if this Court finds that the state court's finding in that regard should

SPECIFIC DISCOVERY REQUESTS

8. In view of the above, and the entire record of this matter, Petitioner requests an order permitting him to conduct the following discovery, which will enable him to prove the due process violation that is before this Court:[5]

A. Inspection of the file maintained by the Pennsylvania Attorney General in the matter of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co);

B. Inspection of the file maintained by the Dauphin County District Attorney in the matter of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co);

C. Inspection of the file maintained by the Dauphin County District Attorney in the matter of Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.);

D. Inspection of the file maintained by the Harrisburg Police Department in the matters of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co) and Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.); and

E. Inspection of the file maintained by the Pennsylvania State Police in the matters of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co) and Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.).

F. Inspection of the file maintained by attorneys Sonia M. Walwyn (PA Bar No. 53526–who represented Doubs at her guilty please) and Melville G.M. Walwyn (PA Bar No. 18060–who represented Doubs at her sentencing) in the matter of

---

not be disturbed, discovery is still appropriate to enable Petitioner to prove that there was an implicit or informal agreement, or that Doubs' understood there to be an agreement. The requested discovery would enable Petitioner to prove each aspect of the alleged due process violation.

[5]Petitioner currently assumes that the Pennsylvania Attorney General represents the interest of the Commonwealth in this litigation and accordingly he can litigate those aspects of this *Motion* related to the Dauphin County District Attorney and other law enforcement agencies implicated by this *Motion*. However, should the Attorney General indicate to the contrary in his responsive papers, Petitioner will serve those agencies. Inasmuch as Petitioner also seeks discovery of the files of the two defense counsel who represented Doubs at her guilty plea and sentencing, he is serving this *Motion* upon them.

Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.).

9. Petitioner's counsel is willing to conduct said inspections under supervision of the Commonwealth's agents and at a time and place that is convenient to the Commonwealth.

CONCLUSION

10. Victoria Doubs literally testified against Petitioner while there existed a plea agreement between her and the Dauphin County District Attorney. The trial prosecutor (employed by the State Attorney General) failed to disclose this agreement, even though he was asked by trial defense counsel to disclose pending agreements with the witness. Petitioner has presented three ways in which the failure to disclose the agreement violated due process of law. He is entitled under Rule 6, and the cases interpreting it, to discovery on this claim. Such discovery would provide him with the tools needed to prove his claim and entitlement to relief.

Respectfully submitted,

/s/ Michael Wiseman

Michael Wiseman
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West – The Curtis Center
Philadelphia, PA 19106
(215) 928-0520

Counsel for Petitioner

Dated: April 2, 2007
Philadelphia, PA

Certificate of Service

I, Michael Wiseman, hereby certify that on this 2nd day of April, 2007 I served the foregoing upon the following persons at the addresses indicated, by United States Mail:

Will Stoycos, Esq.
Assistant Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Sonia M. Walwyn, Esq.
961 Timber Lane
Middletown, PA 19057-3187

Melville G.M. Walwyn, Esq.
1849 State Street
PO Box 1083
Harrisburg, PA 17108-1083

/s/ Michael Wiseman
_____
Michael Wiseman

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	04-cv-1564
Petitioner,	:	John E. Jones, III, USDJ
v.	:	Electronically Filed
NEAL MECHLING, Superintendent, State Correctional Institution at Fayette,	:	
Respondent.	:	

ORDER

AND NOW, this ___ day of _____, 200_, upon consideration of *Petitioner's Motion for Discovery and Consolidated Memorandum of Law*, Respondents' *Answer* and *Brief in Opposition*, and Petitioner's *Reply Memorandum*, it is hereby ORDERED:

1. Petitioner's motion is granted.

2. Within thirty days of the date of this order Respondents shall make the following materials available to Petitioner's counsel for inspection:

   A. The file maintained by the Pennsylvania Attorney General in the matter of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co);

   B. The file maintained by the Dauphin County District Attorney in the matter of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co);

   C. The file maintained by the Dauphin County District Attorney in the matter of Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.);

   D. The file maintained by the Harrisburg Police Department in the matters of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co) and Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.); and

E. The file maintained by the Pennsylvania State Police in the matters of Commonwealth v. Lorenzo Johnson, 1544 CD 1996 (CCP Dauphin Co) and Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.).

3. Within thirty days of the date of this order Attorneys Sonya M. Walwyn and Melville G.M. Walwyn shall make the following materials available to Petitioner's counsel for inspection:

F. The file maintained by attorneys Sonia M. Walwyn (PA Bar No. 53526–who represented Doubs at her guilty please) and Melville G.M. Walwyn (PA Bar No. 18060–who represented Doubs at her sentencing) in the matter of Commonwealth v. Victoria Doubs, 3342 CD 1996, 3169 CD 1996 (CCP Dauphin Co.).

4. Each of the said inspections shall take place at a time and place convenient to the parties and may be done under the supervision of Respondents' agents and counsel Walwyns' agents, as each deem appropriate.

5. Within ten days of the completion of the inspection, counsel for Petitioner shall advise the Court of the same, and will also advise the Court whether Petitioner wishes to submit further pleadings or briefs based upon information obtained during the inspection.

SO ORDERED,

_____
John E. Jones, III
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	04-cv-1564
Petitioner,	:	John E. Jones, III, USDJ
v.	:	Electronically Filed
NEAL MECHLING, Superintendent, State Correctional Institution at Fayette,	:	
Respondent.	:	

CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE

Undersigned counsel hereby certifies that he unsuccessfully attempted to contact counsel for Respondents to determine Respondents' position with respect to the foregoing *Motion.*

/s/ Michael Wiseman

Michael Wiseman
Counsel for Petitioner

Dated: Philadelphia, PA
April 2, 2007

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:	
Petitioner	:	
	:	Civil No. 04-CV-1564
v.	:	
	:	(Judge Jones)
NEAL MECHLING, Superintendent,	:	
SCI-Fayette, Respondent	:	

RESPONDENT'S RESPONSE TO
PETITIONER'S MOTION FOR DISCOVERY

Respondent, through undersigned counsel, opposes Petitioner's motion for discovery and hereby requests this Court to deny such motion. In support thereof, Respondent avers the following.

Introduction

1. Petitioner has requested this Court to order the production for his inspection of all documents in the possession of the Office of Attorney General, the District Attorney of Dauphin County, the Pennsylvania State Police, and the Harrisburg, Pennsylvania Police Department that relate to: (a) Petitioner's underlying criminal case;[1] and (b) the two criminal cases of Commonwealth witness Victoria Doubs that were pending at the time of Petitioner's trial.[2]

---

[1] *Commonwealth v. Lorenzo Johnson*, Dauphin County Court of Common Pleas, No. 1544 CD 1996.

[2] *Commonwealth v. Victoria Doubs*, Dauphin County Court of Common Pleas, No. 3342 CD 1996; *Commonwealth v. Victoria Doubs*, Dauphin County Court of Common Pleas, No. 3169 CD 1996.

2. The stated basis for Petitioner's request is that witness Victoria Doubs had entered into a negotiated plea agreement in her own unrelated cases with a different prosecutor 30 days prior to testifying in Petitioner's trial and imposition of her sentence did not occur until after Petitioner's trial. According to Petitioner, there may be evidence in a law enforcement file showing that she expected to be rewarded for her testimony even though the trial and PCRA hearing records unequivocally establish that no explicit or implicit promises were ever made to her for favorable treatment in exchange for her testimony.[3]

3. As discussed below, Petitioner's motion: (a) is based on a facially meritless claim; (b) is based on a claim that has been procedurally defaulted; (c) is nothing more than an impermissible "fishing expedition;" and (d) is overly broad in scope.

4. For these reasons, Petitioner cannot establish the good cause necessary to justify the disclosures requested. *See* Rule 6(a) of Rules Governing Section 2254 Cases ("Habeas Rules"); *Bracy v. Gramley*, 520 U.S. 899 (1997).[4]

---

[3] As discussed *infra* at 6 n.9, Petitioner also makes the nonsensical assertion that even though the plea agreement did not explicitly or implicitly link Ms. Doubs' sentence to cooperation in Petitioner's case, the plea agreement may have revealed to Petitioner the existence of an actual or implied agreement. *See* Petitioner's motion for discovery, ¶ 7.

[4] Under Habeas Rule 6(a), "a judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of such discovery." There is no automatic right to discovery and a habeas petitioner must, in the words of the Supreme Court, "show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief" before discovery is permitted. *Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997) (emphasis added).

The Claim Underlying the Request for Discovery is, on its Face, Without Merit.

5. The claim underlying Petitioner's request for discovery is that the prosecution failed to apprise Petitioner of the plea agreement between the Dauphin County District Attorney ("the county prosecutor") and Victoria Doubs, thereby depriving Petitioner of important impeachment evidence that violated his due process rights per *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Petitioner's motion for discovery, ¶ 7; Petitioner's mem. of law in supp. of pet. for writ of habeas corpus ("Petitioner's legal memorandum"), 25-29.[5]

6. However, as reflected in the transcript of the state PCRA evidentiary hearing, the prosecutor in Petitioner's case ("the state prosecutor") made pretrial disclosure to defendant of the existence of the pending criminal charges against Ms. Doubs. *See* excerpts from state PCRA hearing in which both counsel for defendant and the state prosecutor testify that Doubs' pending charges were disclosed in advance of trial, attached hereto as Exhibits 1 and 2.

7. Not only did the state prosecutor disclose the existence of those pending charges, but he also permitted Petitioner's trial counsel to review and examine the entire prosecution file prior to trial. *See* excerpt from state PCRA hearing in which Petitioner's counsel states that she was given access to the entire prosecution file, attached hereto as Exhibit 3.

[5] Although Petitioner argues three different theories for relief in the legal memorandum filed with this Court, his request for discovery is based solely on his assertion of a *Brady* violation.

8. Moreover, as acknowledged by Petitioner himself, Ms. Doubs entered into a plea agreement in her two unrelated cases on February 10, 1997, approximately 30 days prior to Petitioner's trial. *See* Petitioner's Legal Memorandum, 25.[6]

9. Ms. Doubs' guilty pleas, deferred sentence, and written guilty plea colloquy in the Court of Common Pleas of Dauphin County were entered on the relevant court dockets and were a matter of public record prior to and at the time of Petitioner's trial. *See* copy of relevant trial court dockets, attached hereto as Exhibits 4 and 5.

10. Defendant and his counsel had ready access to this information and the documents and records related thereto. As noted by the Court of Appeals for the Third Circuit, the general public has access to judicial proceedings and records:

> The public's right of access to judicial records and proceedings is extremely broad, envisioning a pervasive common law right to inspect and copy public records and documents, including judicial records and documents.

In re Cendant, 260 F.3d 183, 192 (3d Cir. 2001) (citations and quotations omitted).

11. Therefore, Petitioner's due process claim under *Brady* is, on its face, without merit because "the government is not obliged under *Brady* to furnish defendant with information he already has or, with any reasonable diligence, he can obtain himself." *U.S. v. Pelullo*, 399 F.3d 197, 202 (3d Cir. 2005); *see U.S. v. Starusko*, 729

[6] It is undisputed that the plea agreement, as reflected in the written and oral colloquys, did not reference, incorporate, or relate in any manner to Petitioner's case or Ms. Doub's testimony therein.

F.2d 256, 262 (3d Cir. 1984) (same); *Steward v. Grace*, 362 F.Supp.2d 608, 621 n. 37 (E.D.Pa. 2005) (same); *Commonwealth v. Spotz*, 896 A.2d 1191 (Pa. 2006) (same).

12. Because Petitioner's foundational *Brady* argument is deficient as a matter of law, he has no good cause to obtain the discovery he seeks.[7]

The Claim Underlying the Request for Discovery is Procedurally Defaulted.

13. Although Petitioner filed a direct appeal in the state courts, he did not include his *Brady* claim in that appeal, a fact that he himself concedes. *See* Petitioner's legal memorandum, 30-32.

14. As a result, the claim was determined to be procedurally barred in the state courts when Petitioner raised it for the first time in his state PCRA petition. Specifically, the Pennsylvania Superior Court found the claim to have been waived and

[7] Even assuming, *arguendo*, that the Doubs plea agreement was not a matter of public record and was not readily accessible to Petitioner, the claim is without merit because Petitioner cannot satisfy the materiality element of *Brady*, which requires the showing of a reasonable probability that if the evidence had been disclosed, the result of the proceedings would have been different. *See United States v. Bagley*, 473 U.S. 667 (1985); *Landano v. Rafferty*, 897 F.2d 661 (3d Cir. 1990). At Petitioner's trial, Ms. Doubs: (1) appeared before the jury in prison clothing; (2) admitted that she was a prison inmate awaiting resolution of pending robbery charges; (3) admitted that she was previously convicted of forgery for attempting to cash a check that was not hers; (4) admitted that she lied to police when first questioned about the incident involving Petitioner; and (5) admitted that she was a user of illegal drugs. *See* excerpt from trial proceedings, attached hereto as Exhibit 6. This mountain of evidence presented to the jury that effectively impeached Ms. Doubs' credibility utterly undermines Petitioner's claim that the lack of disclosure of the plea agreement prevented him from impeaching the witness, which in turn changed the outcome of his trial.

ineligible for merits review pursuant to 42 Pa.C.S.A. §§ 9543(a)(3) and 9544(b).[8] *See* copy of July 17, 2003 Superior Court opinion, attached hereto as Exhibit 7.

15. The Pennsylvania Supreme Court subsequently denied without opinion Petitioner's petition for allowance of appeal to that Court. *See* copy of April 2, 2004 *per curiam* Order of Supreme Court, attached hereto as Exhibit 8.

16. Because Petitioner failed to properly exhaust his claim in the state courts and the claim is now procedurally barred therein, the claim is: (a) deemed exhausted under the doctrine of futility; and (b) procedurally defaulted and ineligible for merits review in this Court. *See* 28 U.S.C. § 2254(b)(1)(A); *Coleman v. Thompson*, 501 U.S. 722, 731-32 (1991); *Murray v. Carrier*, 477 U.S. 478, 485 (1986); *Rose v. Lundy*, 455 U.S. 509, 522 (1982); *Sweger v. Chesney*, 294 F.3d 506 (3d Cir. 2002).[9]

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[8] Under 42 Pa.C.S.A. § 9543(a)(3), a prisoner is ineligible for postconviction relief if his allegation of error has been waived. Under 42 Pa.C.S.A. §§ 9544(b), an issue is "waived" if it could have been raised prior to trial, at trial, during unitary review, on appeal, or in a prior state postconviction proceeding.

[9] Petitioner acknowledges that his *Brady* claim was procedurally barred in the state courts. *See* Petitioner's legal memorandum, 31. However, in an attempt to circumvent the procedural default rule, he alleges that a secret agreement involving the state prosecutor, the county prosecutor, and witness Doubs was "hidden" from him which prevented his inclusion of the issue on direct appeal. *See* Petitioner's legal memorandum, 31-32. As an initial matter, this allegation directly conflicts with definitive testimony on the subject by Ms. Doubs and Petitioner's prosecutor, both of whom stated unequivocally that there was no agreement or understanding of any kind in connection with Ms. Doubs' testimony at Petitioner's trial. *See* excerpts of relevant trial and PCRA testimony, attached hereto as Exhibits 8 and 9. More striking is the fact that Petitioner's allegation of a hidden agreement conflicts sharply with his own statements to this Court acknowledging the lack of evidence to support such a claim. *See, e.g.*, Petitioner's legal memorandum at 28 ("While Doubs' testimony that the trial prosecutor had not offered her any leniency in consideration of her testimony may have been literally true, and even if this prosecutor had not offered her consideration, and

17. A state prisoner who fails to satisfy the state procedural requirements for review of his federal claim forfeits his right to present that claim in federal habeas. *Murray*, 477 U.S. 478.

18. Because Petitioner has forfeited his right to present his *Brady* claim to this Court, he has no good cause to obtain the discovery he seeks.

The Discovery Request is Nothing More than a "Fishing Expedition" That Lacks Good Cause.

19. Petitioner purports to seek review of specific law enforcement files on the ground that the Commonwealth failed to disclose the existence of Victoria Doubs' plea agreement prior to trial. *See* Petitioner's motion for discovery, ¶ 7; Petitioner's legal memorandum, 25-29.

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even if she was not testifying pursuant to a disclosable 'understanding'…") (emphasis added), and at 27 ("Even if there was no deal or understanding that she would receive leniency in consideration of her testimony..") (emphasis added). Petitioner understandably makes these concessions because the plea agreement entered by Ms. Doubs lacks any nexus to her testimony in Petitioner's trial. In an effort to overcome this, Petitioner creates the specter of a nefarious arrangement by bizarrely referring to "the prosecutor's failure to advise counsel that in fact an agreement existed, regardless of whether there was a formal or informal understanding." Petitioner's legal memorandum, 31 (emphasis added). Indeed, Petitioner cleverly weaves together allegations regarding a failure to disclose Doubs' plea agreement (which Petitioner concedes does not evidence a deal with the Commonwealth) with allegations regarding a mysterious covert agreement (which Petitioner suggests may have involved leniency for cooperation). Petitioner's reference to these two distinct "agreements" – one real and one imaginary – as if they are interchangeable results in obfuscation that has great potential to mislead the Court on the issue of whether there was cause to violate the state procedural rules. As noted *supra* at 5 n. 7, Petitioner is also unable to establish prejudice.

20. However, Petitioner has a copy of the guilty plea hearing transcript, as evidenced by Petitioner's attachment of a copy of that document to his legal memorandum.

21. Obviously, there is no need for Rule 6(a) discovery to the extent that Petitioner has the very information that he complains was suppressed prior to trial. Notably, the plea agreement provides no support whatsoever for Petitioner's theory that Ms. Doubs had a deal – explicit or implicit -- with the government that affected his case.

22. To the extent that Petitioner is asserting that Ms. Doubs may have had a subjective belief that she would be rewarded in her cases for her testimony in Petitioner's, the files of the Attorney General, District Attorney, State Police, and local police are irrelevant because they would not shed light on what was in Ms. Doubs' mind at the time of her testimony.[10]

23. To the extent that Petitioner is asserting that there was a sinister arrangement somehow tied to the plea agreement and maliciously withheld from him, he can point to no evidence in support thereof and simply opines that a review of the files may reveal such evidence.[11]

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[10] On the other hand, Petitioner had ample opportunity to shed light on Doubs' subjective thoughts during his thorough cross-examination of her at trial, which included the establishment for the jury that no explicit or implicit agreement or understanding existed between the Commonwealth and herself in connection with her testimony.

[11] The assertion is repudiated in part by the fact that Petitioner's trial counsel was given access to the entire prosecution file prior to trial. *See supra* at 3.

24. "[P]etitioners [in habeas cases] are not entitled to go on a fishing expedition through the government's files in hopes of finding some damaging evidence." *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir. 1994) (*quoting Munoz v. Keane*, 777 F.Supp. 282, 287 (S.D.N.Y. 1991), *affd*, 964 F.2d 1295 (2d Cir.), *cert. denied*, 506 U.S. 986 (1992); *see Strickler v. Greene*, 527 U.S. 263 (1999) (mere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for discovery on collateral review); *Zettlemoyer v. Fulcomer*, 932 F.2d 284, 301 (3d Cir. 1991) (habeas petitioner may not engage in a "fishing expedition" and "bald assertions and conclusory allegations do not provide sufficient ground to warrant requiring the state to respond to discover"); *Grace*, 362 F.Supp.2d 608 (fishing expedition for evidence to support claim that lacks a compelling basis does not constitute good cause for habeas discovery).

25. In light of the foregoing, Petitioner has no good cause to obtain the discovery he seeks.

<u>The Discovery Request is Overly Broad and any Order Requiring Respondent to Produce Documents Should be Limited to Documents Related to the Commonwealth's Dealings with Victoria Doubs During the Relevant Time Period.</u>

26. Petitioner's request to review the entire files of four different law enforcement agencies in connection with his case and those of Victoria Doubs is grossly overbroad given that most of the information contained in those files is utterly irrelevant to the issue of Ms. Doubs' dealings with the Commonwealth.

27. As noted above, this Court is authorized to set limits on the discovery that it grants a party. *See* Habeas Rule 6(a).

28. If this Court deems it appropriate to grant Petitioner's motion, Respondents' respectfully request that the Order compelling disclosure be limited to documents that relate to the Commonwealth's dealings with Victoria Doubs in connection with: (a) her testimony at Petitioner's trial; and (b) her guilty plea in *Commonwealth v. Victoria Doubs*, Dauphin County Court of Common Pleas, No. 3342 CD 1996, and *Commonwealth v. Victoria Doubs*, Dauphin County Court of Common Pleas, No. 3169 CD 1996.

Conclusion

For the foregoing reasons, Respondents request that this Court deny Petitioner's motion for discovery.

Respectfully submitted,

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Date: April 17, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LORENZO JOHNSON,	:
Petitioner	:
	: Civil No. 04-CV-1564
v.	:
	: (Judge Jones)
NEAL MECHLING, Superintendent,	:
SCI-Fayette Respondent	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR DISCOVERY upon the person and in the manner indicated below:

Service by first class mail
addressed as follows:

Michael Wiseman
Defender Association of Philadelphia
Capital Habeas Corpus Unit
The Curtis Center, Suite 545-W
Independence Square West
Philadelphia, PA 19106
(215) 928-0520

_/s/_WILLIAM R. STOYCOS_____
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Dated: April 17, 2007