

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KYLE RAINEY (PETITIONER)

VS.

KEVIN RANSOM
SUPERINTENDENT *et al*, (RESPONDENT)

ON PETITION FOR A WRIT OF CERTIORARI TO THE
PENNSYLVANIA SUPREME COURT

APPENDIX IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

KYLE RAINEY (PETITIONER)
PRO-SE LITIGANT
DW-6872
1000 FOLLIES RD.
SCI.DALLAS. PA. 18612

EXHIBIT A

AND NOW, this 21st day of July, 2020, the Petition for Allowance of Appeal is **DENIED**.

1057 ZDA 2017

FILED

OCT 31 2017

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

Office of Judicial Records
Appeals/Post Trial

COMMONWEALTH
OF PENNSYLVANIA

v.

KYLE RAINEY

: NO.: CP-51-CR-1003961-1994
: CP-51-CR-0708341-1994
:
: Superior Court No.:
: 1254 EDA 2017
:

OPINION

CP-51-CR-0708341-1994 Comm v Rainey, Kyle
Opinion



ANHALT, J.

Appellant in the above-captioned matter appeals this Court's judgment regarding its dismissal of his PCRA petition. This Court submits the following Opinion in accordance with the requirements of Pa.R.A.P. 1925(a). For the reasons set forth herein, the Court holds that Appellant's Post-Conviction Relief Act ("PCRA") Petition should be dismissed.

PROCEDURAL HISTORY

On May 22, 1995 a jury convicted Appellant, Kyle Rainey of first-degree murder and the Court sentenced him to life imprisonment. Subsequently, the Pennsylvania Supreme Court denied his allowance of appeal on May 26, 1998. Appellant filed his first PCRA petition on October 21, 1998. The PCRA court dismissed the petition on July 14, 1999 and the Superior Court affirmed on September 11, 2000. On February 7, 2001, Appellant filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Pennsylvania. On June 12, 2002, a United States District Court Judge issued a report and recommendation holding that Appellant was entitled to federal habeas relief finding that the evidence was insufficient for a first-degree murder conviction. On February 21, 2008, Judge Savage approved and adopted this recommendation but rejected it in part due to the fact that the evidence was sufficient to support

murder in the second-degree, which would have resulted in the same sentence. On April 23, 2010, the United States Court of Appeals affirmed the District Court's denial of Appellant's habeas corpus petition.

On May 20, 2011, Appellant filed his second PCRA petition. The Honorable Shelia Woods-Skipper issued a 907 notice on October 19, 2011. Thereafter, Appellant filed numerous supplemental and amended petitions. On April 14, 2016, the Honorable Leon Tucker issued another 907 notice. Counsel then entered his appearance and filed an amended petition on June 1, 2016. The Court vacated its 907 notice and ordered the Commonwealth to respond. On September 30, 2016 the Commonwealth filed a motion to dismiss Appellant's PCRA. On November 23, 2016, Appellant filed a brief in opposition to the Commonwealth's motion to dismiss and on December 13, 2016 filed an amended PCRA petition. After filing a 907 Notice, this Court formally dismissed Appellant's PCRA Petition on April 13, 2017 as it was untimely.

Appellant filed a timely notice of appeal on April 18, 2017. On May 30, 2017, this Court ordered Appellant pursuant to Pa. R.A.P. 1925(b) to file with the Court a Concise Statement of Matters Complained of on Appeal. On July 23, 2017, Appellant filed with the Court a Concise Statement of Matters Complained of on Appeal. Appellant raises the following issues on appeal:

1. The PCRA Court erred by dismissing Defendant's Amended Petitions without an evidentiary hearing because:
 - a. Defendant was duly diligent in pursuing the witness' actual name and criminal record;
 - b. The witness' prior *crimen falsi* was admissible;
 - c. The evidence of the witness' prior *crimen falsi* was material impeachment evidence that was withheld by the Commonwealth in violation of *Brady*.

FACTUAL HISTORY¹

On March 26, 1994, defendant and two accomplices robbed Bright Jewelers, located on Pratt Street in Philadelphia.² At around noon, the group approached the store and the store's owner, Sam Lee, buzzed Appellant's accomplices into the store. Once inside, the men asked to see jewelry while Appellant acted as a lookout outside. Mr. Lee saw Appellant look into the store on three or four occasions. Eventually, defendant signaled to his cohorts. Immediately, one of them pulled out a gun while the other hurdled the showcase, handcuffed Mr. Lee, and placed him on the floor. The gunman fired a shot into the floor next to the man and ordered him onto his stomach. The men removed jewelry from the showcase and fled. About one month later, police showed Mr. Lee a photographic array that included Appellant's picture. Mr. Lee identified Appellant as the lookout.

On July 1, 1994, Appellant and two associates travelled to Sun Jewelers, a jewelry store in Philadelphia.³ As they approached the store, a man who identified himself to police as Al-Asim Abdul-Karim watched them from a car parked in front of the store. Two of the men entered the store, and Appellant removed a string that held the front door open and closed it behind them. One of the men drew a gun and told everyone inside the store not to move. Almost immediately thereafter, one of Appellant's cohorts fired at the store's owner, Sun Kang. The bullet tore through his neck and he bled to death in front of his wife, Mahlee Kang. Meanwhile, Mr. Abdul-Karim heard the assailants yelling at the victims not to move and encouraging one another to "grab some jewelry." Abdul-Karim identified Appellant out of a photo array later that month.

¹ The following factual history was taken from The Honorable Judge Elliot Ford's Superior Court Opinion dated May 25, 2016, Appellant's Amended Petition dated June 1, 2016 and the Commonwealth's memorandums dated September 30, 2016.

² Facts associated with CP-51-CR-1003961-1994.

³ Facts associated with CP-51-CR-0708341-1994.

Mrs. Kang also identified Appellant as the man who removed the string off the jewelry store door just seconds before her husband was killed.

DISCUSSION

1. The PCRA Court did not err when it dismissed Appellant's Amended Petition without an evidentiary hearing.

Appellant argues that this Court erred when it dismissed his Amended PCRA Petition without an evidentiary hearing. Appellant is not entitled to an evidentiary hearing. His PCRA Petition fails to satisfy an exception to the PCRA time-bar. In his argument, Appellant argues that he was duly diligent in pursuing Mr. Abdul-Karim's real name and criminal record. However, Appellant's petition is over a decade late and he provides virtually no explanation for this lapse in time. Thus, his petition is untimely and this Court does not have jurisdiction to hear Appellant's other arguments. Under the rules governing the timing of PCRA petitions:

(b) Time for filing petition. -- (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S.A. § 9545(b)(1-2). This 60-day rule requires a petitioner to plead and prove that the information on which his claims are based could not have been obtained earlier despite the exercise of due diligence. *Commonwealth v. Albrecht*, 994 A.2d 1091 (Pa. 2010). The 60-day filing requirement is measured from the time a petitioner could have obtained the new information with the exercise of due diligence. *Commonwealth v. Marshall*, 947 A.2d 714, 720 (Pa. 2008).

Subsection (b)(1)(ii) has two components, which must be alleged and proved. Namely, the petitioner must establish that: 1) “the facts upon which the claim was predicated were unknown” and 2) “could not have been ascertained by the exercise of due diligence.” 42 Pa.C.S. § 9545(b)(1)(ii); *Commonwealth v. Bennett*, 930 A.2d 1264, 1272 (Pa. 2007). If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection. *Commonwealth v. Lambert*, 884 A.2d 848, 852 (Pa. 2005). If the petitioner fails to explain why, with the exercise of due diligence, the claim could not have been filed earlier, then he fails to satisfy the sixty-day requirement. *Commonwealth v. Breakiron*, 781 A.2d 94, 98 (Pa. 2001). Additionally, a PCRA court may deny a petition without an evidentiary hearing where it determines that a petitioner’s claims are without merit and would not entitle him to PCRA relief. *Commonwealth v. Payne*, 794 A.2d 902, 906 (Pa. Super. 2002); Pa. R. Crim. P. 907. “The controlling factor in determining whether a petition may be dismissed without a hearing is the status of the substantive assertions in the petition.” *Commonwealth v. Weddington*, 522 A.2d 1050, 1052 (Pa. 1987).

Here, Appellant waited nine years after his conviction became final to hire an investigator. It then took about seven more years to uncover Mr. Abdul-Karim’s true identity. Appellant claims that he filed a supplemental petition within sixty days of his investigator’s most recent e-mail, whom he claims to have first employed in 2007. However, the PCRA rules do not require a petitioner to file a claim within sixty days of when the evidence was discovered; it requires him to file it within sixty days of when it *could have* been discovered.

Additionally, Appellant must explain why he could not have learned the true identity of Mr. Abdul-Karim earlier. Appellant offered virtually no explanation as to why, with the exercise of due diligence, this information could not have been found earlier. The only explanation that

Appellant provides is that he hired this private investigator on a hunch, “when he first alleged something was wrong with Abdul-Karim’s testimony.” However, Appellant does not explain why he did not realize something was wrong with Mr. Abdul-Karim’s testimony when he heard him testify in 1995, or the years his case was on appeal. Additionally, seven years that passed after he hired the private investigator remained unexplained. Both substantial lapses in time are insufficiently explained. And as provided by *Payne* and *Weddington*, since Appellant failed to plead a substantive issue in his petition, no evidentiary hearing is required. Thus, Appellant failed to plead and prove his claim, leaving his PCRA Petition untimely. Therefore, this Court did not err in dismissing Appellant’s PCRA petition without an evidentiary hearing.

In the alternative, even if Appellant’s claims were not time-barred, his *Brady v. Maryland*, 373 U.S. 83 (1963) claim fails. The Supreme Court of Pennsylvania has explained that, in order to establish a *Brady* violation, a defendant must show that: (1) evidence was suppressed by the state, either willfully or inadvertently; (2) the evidence was favorable to the defendant, either because it was exculpatory or because it could have been used for impeachment; and (3) the evidence was material, in that its omission resulted in prejudice to the defendant. *Commonwealth v. Willis*, 46 A.3d 648, 667 (Pa. 2012). Further, “the touchstone of materiality is whether there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.* at 670. Since the evidence Appellant sought to introduce is not material, his *Brady* claim fails.

Appellant’s *Brady* contention is in reference to the Commonwealth’s knowledge of Mr. Odom’s alias. Appellant argues that if he had evidence of Mr. Odom’s alias and his *crimen falsi* convictions, he would have had the opportunity to impeach his testimony. However, to succeed,

Appellant would have to prove that there is a reasonable probability that the jury would have acquitted him based on his attempt at impeaching Mr. Odom.

First of all, Mr. Odoms was convicted of one count of theft by receiving stolen property over twenty years before trial. This evidence would likely not be admissible and Appellant makes no attempt at arguing why it might be admissible. Additionally, even without Mr. Odom's testimony, there is overwhelming evidence that proved his participation in the murder. The victim's wife unequivocally identified Appellant, a price tag from the jewelry store was recovered from his house, a matching bullet to the casing found at the scene recovered in his bedroom and his flight from federal agents when they came to make his arrest. Appellant's argument is baseless. Therefore, his *Brady* claim fails.

CONCLUSION

After review of the applicable statutes, testimony, and case law, this Court did not err in dismissing Appellant's PCRA Petition as his Petition is untimely.

BY THE COURT:



DIANA L. ANHALT, J.

DATE: October 31, 2017

PROOF OF SERVICE

I hereby certify that on the date set forth below, I caused an original copy of the Judicial Opinion to be served upon the persons at following locations, which service satisfies the requirements of Pa.R.A.P. 122:

Mosser Legal, PLLC
Todd M. Mosser, Esquire
211 N. 13th Street, Suite 801
Philadelphia, PA 19107

Hugh Burns, Esquire
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107

Date: 10/31/17

By: *Diana L. Anhalt*
Diana Anhalt, Judge

APPENDIX B

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

KYLE RAINEY

Appellant

No. 1254 EDA 2017

Appeal from the PCRA Order April 13, 2017
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0708341-1994,
CP-51-CR-1003961-1994

BEFORE: STABILE, J., NICHOLS, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY NICHOLS, J.:

FILED FEBRUARY 18, 2020

Appellant Kyle Rainey appeals from the orders dismissing his serial Post Conviction Relief Act¹ (PCRA) petitions filed at each of the above-captioned docket numbers. Appellant contends he presented newly-discovered evidence that Al-Asim M. Abdul-Karim, a Commonwealth witness at his murder and robbery trials, was an alias for Elvin Odoms and had a *crimen falsi* conviction. We affirm.

By way of background, in docket number 708341-1994 (Sun Homicide), a jury found Appellant guilty of first degree murder, two counts of robbery, one count of aggravated assault, one count of recklessly endangering another person, one count of criminal conspiracy, one count of possessing instruments

¹ 42 Pa.C.S. §§ 9541-9546.

of crime, and one count of carrying firearms on public streets or public property on May 22, 1995. Following sentencing and Appellant's direct appeal, the conviction in the Sun Homicide became final in July 1998. In docket number 1003961-1994 (Bright Jewelers Robbery), a separate jury found guilty of Appellant of robbery and possessing an instrument of crime on November 1, 1995. Appellant's conviction in the Bright Jewelers Robbery became final in July 1997.

This Court previously summarized the facts of the Sun Homicide, as follows:

On June 1, 1994, [A]ppellant and three co-conspirators robbed a jewelry store. During the commission of the robbery, the gunman, Nathan Riley (Riley), shot and killed storeowner Sun Yoo Kang [(the decedent)] in front of his wife, Mahlee Kang. Officers of the Philadelphia Police Department interviewed Mrs. Kang and [Abdul-Karim], a witness who was present outside the store in a parked automobile. . . .

On June 17, 1994, Riley surrendered to the police and gave a statement, which was reduced to writing by the interviewing detective, Albert Maahs. . . .^[2]

On June 26, 1994, Mrs. Kang and Mr. Abdul-Karim positively identified [A]ppellant from a photo array as a participant in the events of June 1, 1994. Two days later, after obtaining a search warrant, the police searched [A]ppellant's home and found a .38 caliber weapon with bullet casings matching those bullets used in the robbery. Police also discovered a small gold-colored price tag which Mrs. Kang identified as a tag from her store with her

² We add that at Appellant's trial, the Commonwealth introduced Riley's police statement inculcating Appellant as the ringleader. ***Commonwealth v. Riley***, 4044 PHL 1995 (Pa. Super. filed Sep. 12, 1996) (unpublished mem.) (citing N.T. Trial, 5/19/95, at 35, 57).

handwriting on it. The police also searched the house of Sharon Bell, the girlfriend of Darrell Wallace (Wallace), another accomplice to the crime. Inside the house, the police found the same type of jewelry that Mrs. Kang described as stolen from the store.

The police arrested [A]ppellant and Wallace and charged them with a host of crimes stemming from the events of June 1, 1994.

Commonwealth v. Rainey, 139 A.3d 261, 261-62 (Pa. Super. 2016)

(citation and footnote omitted and some formatting altered).

This Court previously summarized the facts of the Bright Jewelers Robbery, as follows:

On March 26, 1994[,] at approximately noon, at Bright Jewelers, . . . , the complainant came into contact with the Appellant. Complainant Sam Lee was in his jewelry store, standing behind a counter next to the front door when two males, including Nathaniel [Riley], approached to enter. Mr. Lee, believing the two individuals to be customers, "buzzed" them through the locked doors, into the store. As the two individuals were inquiring as to some men['s] gold rings and chains, Mr. Lee observed another male outside, looking into his store. Mr. Lee identified this third person as Appellant. As Mr. Lee was showing the jewelry, he looked to Appellant several times, to see if he wished to enter the store. Instead, Mr. Lee observed Appellant give [Riley] a "nodding" signal. At that moment, [Riley] pulled out a gun, while the other man jumped over the showcase, handcuffed Mr. Lee and ordered him to lay on the floor with his face down. . . . The men then pulled out a black trash bag and began putting all of the jewelry into the bag. Once the men had finished throwing the jewelry into the bag, they [exited the store and ran away.] Mr. Lee . . . ran outside to chase after the men. After losing sight of the men, Mr. Lee went back to his store and telephoned the police. . . . Approximately one month after the robbery, detectives visited the complainant at the store and showed him numerous photographs. From these, the complainant was able to immediately identify Appellant. . . .

Commonwealth v. Rainey, 383 PHL 1996 (Pa. Super. filed June 25, 1997) (unpublished mem.). Of relevance to this appeal, Abdul-Karim testified against Appellant in both the Sun Homicide and the Bright Jewelers Robbery.

Appellant previously filed one PCRA petition as to the Sun Homicide and four unsuccessful PCRA petitions related to the Bright Jewelers Robbery, none of which merited relief. The instant appeal arises from Appellant's second PCRA proceeding as to the Sun Homicide, which Appellant commenced *pro se* in 2011, and Appellant's fifth PCRA proceeding in the Bright Jewelers Robbery, which Appellant commenced *pro se* in 2013.

The PCRA court appointed Todd Mosser as Appellant's PCRA counsel for the Bright Jeweler Robbery in May 2014, and for the Sun Homicide in August 2015. Attorney Mosser filed an amended PCRA petition for the Sun Homicide in June 2016, and an amended PCRA petition for the Bright Jewelers Robbery in January 2016.

In the amended petition,³ Appellant contended that the Commonwealth improperly withheld Abdul-Karim's former name of Elvin Odoms. Appellant's PCRA Pet., 11/27/13, at 1. Appellant argued that Abdul-Karim pleaded guilty to receiving stolen property on January 31, 1975. ***Id.*** Appellant maintained that the Commonwealth failed to disclose Abdul-Karim's former name and that

³ Although there were two counseled PCRA petitions (the Sun Homicide and Bright Jewelers Robbery) giving rise to this appeal, we will refer to the petitions, collectively, as the petition.

he learned this information on October 2, 2013, from a private investigator Appellant retained. **Id.** Appellant further claimed that the Commonwealth intentionally concealed Abdul-Karim's prior name and criminal record in violation of **Brady v. Maryland**, 373 U.S. 83 (1963). Appellant asserted that his petition was timely based on the governmental interference exception to the PCRA time bar. **See** 42 Pa.C.S. § 9545(b)(1)(i).

Appellant raises the following issue on appeal from the orders dismissing his PCRA petition:

1. Did the PCRA court err in dismissing Appellant's PCRA Petition without an evidentiary hearing because Appellant presented newly-discovered evidence, because Appellant was diligent in obtaining such evidence, because such evidence constituted a **Brady** violation and would have led to a different outcome at trial, and because it is impossible for the PCRA [court] to make factual determinations without conducting an evidentiary hearing?

Appellant's Brief at 4.

Appellant initially contends that he filed his November 27, 2013 Bright Jewelers Robbery PCRA petition and memoranda of law within sixty days of receiving the private investigator's October 2, 2013 letter, which advised him of Abdul-Karim's former name. **Id.** at 14. Appellant argues that he had no reason to believe that Abdul-Karim was concealing his name at the time of Appellant's 1995 trial. **Id.** at 15. He faults the Commonwealth for not disclosing Abdul-Karim's former name of Elvin Odoms and that Abdul-Karim had a *crimen falsi* conviction. **Id.** at 15-16. In Appellant's view, the Commonwealth engaged in governmental interference and violated **Brady**.

Id. at 16. In short, Appellant asserts that he timely filed his petition under 42 Pa.C.S. § 9545(b)(1)(i) and (ii).

The standard of review for an order resolving a PCRA petition follows:

This Court's standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record.

Commonwealth v. Grayson, 212 A.3d 1047, 1051 (Pa. Super. 2019) (citation omitted).

"[T]he timeliness of a PCRA petition is a jurisdictional requisite." **Commonwealth v. Brown**, 111 A.3d 171, 175 (Pa. Super. 2015) (citation omitted). A PCRA petition, "including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final" unless the petitioner pleads and proves one of three statutory exceptions. 42 Pa.C.S. § 9545(b)(1). The three statutory exceptions follow:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S. § 9545(b)(1)(i)-(iii).

To invoke one of these exceptions, a petitioner must also file his petition within sixty days of the date the claim could have been presented. **See** 42 Pa.C.S. § 9545(b)(2) (subsequently amended, eff. Dec. 24, 2018);⁴ **Commonwealth v. Edmiston**, 65 A.3d 339, 346 (Pa. 2013) (stating, “We have established that this 60–day rule requires a petitioner to plead and prove that the information on which his claims are based could not have been obtained earlier despite the exercise of due diligence.” (citations omitted)). It is the PCRA petitioner’s “burden to allege and prove that one of the timeliness exceptions applies.” **Commonwealth v. Albrecht**, 994 A.2d 1091, 1094 (Pa. 2010) (citation omitted).

“Although a **Brady** violation may fall within the governmental interference exception, the petitioner must plead and prove the failure to previously raise the claim was the result of interference by government officials, and the information could not have been obtained earlier with the exercise of due diligence.” **Commonwealth v. Abu-Jamal**, 941 A.2d 1263, 1268 (Pa. 2008) (citation omitted). In determining whether a petitioner has acted with due diligence, we have explained that “[d]ue diligence does not

⁴ Section 9545(b)(2) was amended on October 24, 2018, effective December 24, 2018, and extended the time for filing from sixty days of the date the claim could have been first presented to one year. The amendment applies to claims arising on December 24, 2017, or thereafter. **See** Act of Oct. 24, 2018, P.L. 894, No. 146, § 3. Because Appellant filed the PCRA petitions at issue prior to December 24, 2017, the amended Section (b)(2) does not apply to him.

require perfect vigilance and punctilious care, but merely a showing the party has put forth reasonable effort to obtain the information upon which a claim is based.” **Commonwealth v. Cox**, 146 A.3d 221, 230 (Pa. 2016) (citation and some formatting omitted).

Here, Appellant merely asserts a bald claim of governmental interference because he did not articulate or prove that the Commonwealth knew of Abdul-Karim’s former name, and that it intentionally or inadvertently suppressed this information. Therefore, Appellant’s claim of governmental interference did not establish the timeliness of his PCRA petitions. **See Albrecht**, 994 A.2d at 1094; **Abu-Jamal**, 941 A.2d at 1268.

Appellant also argues that he recently discovered new facts, namely, Abdul-Karim’s former name and the prior *crimen falsi* conviction. The newly discovered fact timeliness exception in Section 9545(b)(1)(ii)

requires a petitioner to demonstrate he did not know the facts upon which he based his petition and could not have learned those facts earlier by the exercise of due diligence. Due diligence demands that the petitioner take reasonable steps to protect his own interests. A petitioner must explain why he could not have learned the new fact(s) earlier with the exercise of due diligence. This rule is strictly enforced. Additionally, the focus of this exception is on the newly discovered facts, not on a newly discovered or newly willing source for previously known facts.

Brown, 111 A.3d at 176 (citations and quotation marks omitted). The timeliness exception in Section 9545(b)(1)(ii)

has often mistakenly been referred to as the “after-discovered evidence” exception. This shorthand reference was a misnomer, since the plain language of subsection (b)(1)(ii) does not require the petition to allege and prove a claim of “after-discovered

evidence.” Rather, as an initial jurisdictional threshold, Section 9545(b)(1)(ii) requires a petitioner to allege and prove that there were facts unknown to him and that he exercised due diligence in discovering those facts. Once jurisdiction is established, a PCRA petitioner can present a substantive after-discovered-evidence claim. In other words, the “new facts” exception at:

[S]ubsection (b)(1)(ii) has two components, which must be alleged and proved. Namely, the petitioner must establish that: 1) the **facts** upon which the claim was predicated were **unknown** and 2) could not have been ascertained by the exercise of **due diligence**. If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection.

Thus, the “new facts” exception at Section 9545(b)(1)(ii) does not require any merits analysis of an underlying after-discovered-evidence claim.

Id. at 176-77 (citations and some formatting altered).

Appellant acknowledged that he heard Abdul-Karim testify in 1995, but did not retain a private investigator to investigate him until 2007. The investigator could not locate any records on Abdul-Karim. Appellant then retained a second private investigator who discovered in October 2013 that Abdul-Karim’s former name was Elvin Odoms.⁵ Appellant also reiterated that he requested relief from the federal district court in 2007, and had also requested information from the Pennsylvania State Police in 2010 concerning the name change. We are not convinced that Appellant’s above detailed

⁵ The record does not detail how the investigator determined Abdul-Karim’s former name. The existence of Abdul-Karim’s former name is not disputed by the Commonwealth.

actions over six years prove that he acted with due diligence. *See id.*; *see also Cox*, 146 A.3d at 230.

But even assuming Appellant pleaded and proved a Section 9545(b)(1)(ii) exception, he is not entitled to relief. As to the merits, Appellant argues that if he had known about Abdul-Karim's prior conviction, he could have filed a criminal complaint and potentially barred him from taking the stand as a witness. Appellant's Brief at 21. Alternatively, Appellant contends that if he could have established Abdul-Karim's testimony was not credible, he could have been acquitted because the other evidence identifying him was contradictory and vague. *Id.* at 28. Appellant separately asserts that the PCRA court erred by not holding an evidentiary hearing to assess credibility. *Id.* at 22.

To establish eligibility for relief under the "after-discovered evidence" provision of Section 9543(a)(2)(vi):

a petitioner must prove that (1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.

Cox, 146 A.3d at 228 (citation and quotation marks omitted).

We agree with the PCRA court that Appellant failed to establish that the information regarding Abdul-Karim, even if admitted into evidence, would likely compel a different verdict. *See Cox*, 146 A.3d at 228. Concerning the Bright Jewelers Robbery, the complainant identified Appellant from a photo

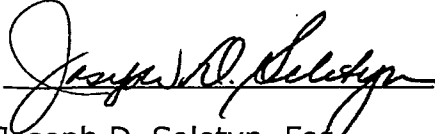
array. The Commonwealth presented evidence that established the gun used in the Bright Jewelers Robbery was identical to the gun used in the Sun Homicide case. Further, the decedent's wife identified Appellant from a photo array in the Sun Homicide case. The police also recovered other inculpatory evidence from Appellant's home. Further, as noted above, the Commonwealth introduced Appellant's co-defendant's police statement implicating Appellant as the ringleader. This record contains overwhelming evidence supporting the verdicts in both cases notwithstanding Abdul-Karim's testimony identifying Appellant.

Accordingly, Appellant has failed to establish that after-discovered evidence concerning Abdul-Karim's former name would have likely resulted in a different verdict. **See Cox**, 146 A.3d at 228. Additionally, Appellant did not demonstrate that the trial court would have admitted Abdul-Karim's 1975 conviction for receiving stolen property, which occurred more than ten years prior to Appellant's trial. **See generally** Pa.R.E. 609(b). Moreover, since Appellant has not established a genuine issue of fact that he was entitled to relief, we find no error in the PCRA court's decision to dismiss Appellant's petition without a hearing. **See Commonwealth v. Smith**, 121 A.3d 1049, 1052 (Pa. Super. 2015); **see also** Pa.R.Crim.P. 907(1).

Orders affirmed.

J-S66026-19

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/18/20

EXHIBIT D

The exception set forth in the Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9545(b)(1)(ii), does not require any merits analysis of the underlying claim. Rather, the exception merely requires that the facts upon which such a claim is predicated must not have been known to the appellant, nor could they have been ascertained by due diligence. The plain language of 42 Pa.C.S. § 9545(b)(1)(ii) is not so narrow as to limit itself to only claims involving after-discovered evidence. Rather, 42 Pa.C.S. § 9545(b)(1)(ii) has two components, which must be alleged and proved. The petitioner must establish that: (1) the facts upon which the claim was predicated were unknown and (2) could not have been ascertained by the exercise of due diligence. If the petitioner alleges and proves these two components, then the PCRA court has jurisdiction over the claim under this subsection.

Criminal Law & Procedure > Postconviction Proceedings > General Overview

Criminal Law & Procedure > Appeals > Reviewability > Time Limitations

Criminal Law & Procedure > Appeals > Reversible Errors > Discovery

The Post Conviction Relief Act (PCRA), 42 Pa.C.S. § 9545(b)(1)(ii), provides that any exception set forth in 42 Pa.C.S. § 9545(b)(1)(ii) must be plead within 60 days of when it could have been presented. § 9545(b)(2).

EXHIBIT "E"

MICHAEL WEARRY v. BURL CAIN, WARDEN
SUPREME COURT OF THE UNITED STATES
194 L. Ed. 2d 78; 2016 U.S. LEXIS 1654
No. 14-10008.
March 7, 2016, Decided

Notice:

The LEXIS pagination of this document is subject to change pending release of the final published version.

Editorial Information: Prior History

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF LOUISIANA, LIVINGSTON PARISH State ex rel. Wearry v. Cain, 161 So. 3d 620, 2015 La. LEXIS 439 (La., 2015)
Judges: Roberts, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan.

CASE SUMMARY Prosecution's failure to disclose material evidence violated death row inmate's due process rights because newly revealed evidence sufficed to undermine confidence in inmate's conviction because witness's credibility, already impugned by many inconsistent stories, would have been further diminished had jury learned about newly revealed evidence.

OVERVIEW: HOLDINGS: [1]-The prosecution's failure to disclose material evidence violated the death row inmate's due process rights because the newly revealed evidence sufficed to undermine confidence in the inmate's conviction because the only evidence directly tying the inmate to capital murder was a first witness's dubious testimony, corroborated by the similarly suspect testimony of a second witness, and the first witness's credibility, already impugned by his many inconsistent stories, would have been further diminished had the jury learned about the newly revealed evidence; [2]-The state postconviction court improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively, and failed even to mention the statements of the two inmates impeaching the first witness; [3]-The denial of the inmate's Brady claim ran up against settled constitutional principles.

OUTCOME: Petition for writ of certiorari granted. Judgment reversed. Case remanded. Per curiam decision.

LexisNexis Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Due Process

The suppression by the prosecution of evidence favorable to an accused upon request 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. Evidence qualifies as material when there is any reasonable likelihood it could have affected the judgment of the jury. To prevail on his Brady claim, a defendant need not show that he more likely than not would have been acquitted had the new evidence been admitted. He must show only

SCTHOT

EXHIBIT "F"

INVESTIGATION INTERVIEW RECORD		PHILADELPHIA POLICE DEPARTMENT HOMICIDE DIVISION		CASE NUMBER H-94-178
				INTERVIEWER Brennan #660
NAME Mal KANG	AGE 46	RACE	DOB 12-6-47	
ADDRESS	APARTMENT NUMBER		TELEPHONE NUMBER	
NAME OF EMPLOYMENT/SCHOOL Kay Gold Jewelry				
ADDRESS OF EMPLOYMENT/SCHOOL 113 W. Cheltenham Ave.		DEPARTMENT	TELEPHONE NUMBER	
DATES OF PLANNED VACATIONS None				
DATES OF PLANNED BUSINESS TRIPS None				
NAME OF CLOSE RELATIVE				

PLACE OF INTERVIEW Homicide - Interview Room D	DATE 6-1-94	TIME 3:40P	AM PM
BROUGHT IN BY Police	DATE	TIME	AM PM
WE ARE QUESTIONING YOU CONCERNING The shooting death of your husband Sun KANG inside 113 W. Cheltenham Ave.			
WARNINGS GIVEN BY N/A	DATE	TIME	AM PM
ANSWERS	(1)	(2)	(3)
	(4)	(5)	(6)
	(7)		

Q. Would you please go on in your own words and tell me everything that happened inside your store today?

A. It was between 11:30 and 11:45 this morning. I was sitting on the high chair and my husband was sitting on the deep chair behind the counter. Two (2) males came in the store and walked right up to the counter where I was. As soon as I saw them they already had the gun out. He pointed the gun right at me and said "Don't move." My husband tried to see what was happening and he just did like that (indicating moving to the edge of the seat and stretching his neck upward) and the guy just shot him. Then he pointed the gun back at me and said "Don't move." Then I said, "You shot him." I think he said "Be quiet", but then he kept saying "don't move." He kept the gun pointed at me. He moved back toward the door and I thought that they were going to leave so I pushed the button to open the door. He, the one with the gun, opened the door a little bit and he kept the door opened a little bit but they didn't leave. He stayed at the door and kept the gun pointed at me. The other one came behind the counter and he was taking the merchandise and putting it into a white bag that he brought with him. It looked like a white pillow case. The one at the door

RECORD <input type="checkbox"/> Yes <input type="checkbox"/> No	CHECKED BY <i>Mal KANG</i>
REVIEWED BY	

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Mal KANG

PAGE

2

CASE NO.

H-94-178

A. kept telling him "take more, we got time." Then the one with the gun was telling him, "Put in some more over there, we have enough time." But the one behind the counter couldn't open one of the counters and the one with the gun was telling him to break it but then the one with the bag got the counter open. The one with the gun kept giving the orders and the one with the bag kept following what that one with the gun told him to do. Then the one with the gun said "Let's go" and that's when they both left.

Q. Describe the one with the gun?

A. B/M, 16 - 18 yrs., long skinny face, not too thin, very light skinned, a little darker than my complexion. light brown hair, lighter than mine, very light brown eyes. He was small, about 5'3, or 5'4, and thin. a light navy blue T shirt, long pants, I don't remember but they might have been black.

Q. Describe the male with the bag?

A. B/M, 16 to 18 yrs., dark black complexion, smaller than the other one, about 5'1 or 5'2, skinny. white hat, white shirt and white pants, I don't know if they were pants or shorts.

Q. When they left your store where did they go?

A. They got into a blue car, it was double parked in front of the store, it didn't have a license plate, then the car went west. ^{M. K.} ~~past 2nd St.~~

Q. Could you see how many other people were in this car?

A. I didn't see, but the driver was waiting for them. As soon as they got in the car moved.

mal he kang

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME Mal KANG	PAGE 3	CASE NO. H-94-178
------------------	-----------	----------------------

Q. How many gunshots were fired in your store?

A. One

Q. Can you describe the gun?

A. Grey and in between it had the silver color. (Shown a .38 S&W revolver, and a Glock - and she described the gun as looking like the Glock.)

Q. How did these male get into your store?

A. The door was tied open with a string to let air in.

Q. Who shut the door after the males got into your store?

A. There was a 3rd boy. He had on a green top. As soon as the 1st two (2) boys came in the store he was right there with them. He lifted the string and let the door close but he didn't come in the store. I don't know where he went after he left the door shut because that is when the boy with the gun shot my husband.

Q. Can you describe the male that shut the door.

A. He was dark skinned, a little bit older maybe 19. He look like fat than the boys.

Q. why was the door to the store tied open?

A. Because it's spring time. To let the fresh air in.

Q. How did the male with the bag get behind the counter?

A. He walked back through the little door, he couldn't get it open at first and the one with the gun kept telling him to get the key from me, but there is no key.

malibu Kang

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME	PAGE	CASE NO.
Mal KANG	4	H-94-178

Q. There were handcuffs found behind the counter did they belong to you?

A. No

Q. Do you have a gun in the store?

A. Yes, in the safe. It's a small, tiny gun. I don't know what kind it is.

Q. Did you ever see either of these males before today?

A. No

Q. Before today, did you ever see the male who untied the door?

A. No

Q. Do you have any employees that work for you?

A. No, just me and my husband.

Q. Have you ever had any employees?

A. Just my sister and my brother-in-law.

Q. How long have you owned this store?

A. eight (8) years.

Q. Have you ever been robbed before?

A. Last November, but they didn't take anything. It may have been October, I'm not sure.

mal lee kang

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

Mal KANG

PAGE

5

CASE NO.

H-94-178

Q. What time did you open the store today?

A. About 10:10 this morning.

Q. Did you have any customers today before the robbery?

A. Yes, but they were all older. One bought a watch battery, that was an older man.

Then a lady came with a baby and she bought an earring and then the other one was an older man, I don't know what he bought, my husband waited on him.

Q. Have you had any B/M's come into your store recently actling suspiciously?

A.No

mal lee kang

INVESTIGATION INTERVIEW RECORD		PHILADELPHIA POLICE DEPARTMENT HOMICIDE DIVISION		CASE NUMBER <i>H94-178</i>	
				INTERVIEWER <i>SMITH / MARLIS</i>	
NAME <i>MAG KANG</i>		AGE <i>46</i>	RACE	DOB <i>12-6-47</i>	
ADDRESS		APARTMENT NUMBER		TELEPHONE NUMBER	
NAME OF EMPLOYMENT/SCHOOL <i>KAY GOLD JEWELRY ST</i>				ST.	
ADDRESS OF EMPLOYMENT/SCHOOL		DEPARTMENT		TELEPHONE NUMBER	
DATES OF PLANNED VACATIONS					
DATES OF PLANNED BUSINESS TRIPS					
NAME OF CLOSE RELATIVE					
ADDRESS				TELEPHONE NUMBER	
PLACE OF INTERVIEW <i>RESIDENCE</i>				DATE <i>6/26/94</i>	TIME <i>2:30 PM</i>
BROUGHT IN BY				DATE	TIME AM PM
WE ARE QUESTIONING YOU CONCERNING					
WARNINGS GIVEN BY				DATE	TIME AM PM
ANSWERS					
(1)	(2)	(3)	(4)	(5)	(6)
<p><i>Q. MRS. KANG, WE WOULD LIKE YOU TO LOOK AT SEVERAL PHOTO DISPLAY IN REFERENCE TO THE INCIDENT ON JUNE 1ST 1994 AT YOUR JEWELRY STORE AT 113 W. CHATEAU AVE. WHEN YOUR STORE WAS ROBBED & YOUR HUSBAND WAS SHOT TO DEATH.</i></p> <p><i>THE FIRST GROUP OF PHOTOS THAT WE WANT TO SHOW YOU IS MARKED H94-178, PHOTO DISPLAY #3. LOOK AT THIS GROUP OF PHOTOS & TELL US IF YOU RECOGNIZE ANYONE?</i></p>					
<p><i>A. YES, #4 IS THE SKINNY LITTLE ONE WHO WENT BEHIND THE COUNTER & TOOK THE JEWELRY & PUT IT INTO THE WHITE BAG. HE WAS TRYING TO GET THE BOTTOM CASE OPEN & HE KEPT SAYING "I CAN'T OPEN IT, I CAN'T OPEN IT." THEN THE ONE WITH THE GUN SAID "GET THE KEY FROM THE LADY." (IDENTIFIED PHOTO OF MARIE EVERETTE)</i></p> <p><i>& mail her Kang</i></p>					
RECORD <input type="checkbox"/> Yes <input type="checkbox"/> No		CHECKED BY <i>LADY.</i>			
REVIEWED BY					

INVESTIGATION INTERVIEW RECORD
CONTINUATION SHEET

CITY OF PHILADELPHIA
POLICE DEPARTMENT

NAME

MALE KANG.

6-26-94

PAGE

2

CASE NO.

H94-178

Q. Now we would like for you to look at a group of photos that is marked H94-178 Photo Display #2. Please take your time + look at these photos + tell us if you recognize anyone?

A. #2 Looked just like the one who untied the door. He was big + fat + he had smooth skin. I looked directly in his face, he was wearing a grey shirt, with ^{marked in it} (I identified photo of Kyle Ramey.)

Q. Is there anything else that you can tell us about either of these males?

A. Yep. #4 from the first folder of pictures, is the one who had the handcuffs. He left the handcuffs behind in the store.
+ mal bee kang

EXHIBIT "G"

Mark H. Shaffer, P.I.

Waldman&Associates

P.O. Box 358
Feasterville, PA 19053-0358

www.waldmanpi.com

Office 267-269-2555

Fax 215-396-3320

Cell 267-269-2555

E-Mail: markshaffer@waldmanpi.com

March 31, 2015

Todd M. Mosser, Esq.
The Law Office of Todd Mosser, PLLC
2 Penn Center, Suite 1723
Philadelphia, PA 19102
Via email only: todd@mosserlegal.com

RE: PA vs. Kyle Rainey
CP-51-CR-1003961-1994
Major Charge Robbery
Our # 481 CR 07338

Dear Mr. Mosser:

I have surprisingly received an email from Elvin Edoms as a result of my in-person visit to his home. The email is attached.

At this time I am going to close my file, which I assure you will not be destroyed should my services be required in the future. Hopefully, you can file the addendum to the PCRA.

I am here for you if you need me on this or any other matter.

Respectfully submitted,

Mark H. Shaffer, MA (Psych.)
Licensed Private Investigator

CC: Kyle Rainey, #DW6872
1000 Follies Road,
Dallas, PA 18612

From: elvin.odoms <eo200039@gmail.com>

To: markshaffer@waldmanpi.com

Cc:

Date: Friday, March 27, 2015 03:03 pm

Subject: March 24, 2015 Note

Attachments: ☐ Text version of this message (414B)

Dear Mark:

I found a note in my mail slot dated March 24, 2015 RE: Sun Yoo Kang.

I did not like how the events related to the case went. On the part of the Rescue Squad,,the police who responded.

I am unwilling to have anything to do with the case, no matter what the reason.

I do not look at this Email box on a regular basis example there are 1,086 unread Emails as of this writing.

Respectfully,

e odoms

2
Mark H. Shaffer, P.I.

Waldman & Associates

www.waldmanpi.com

P.O. Box 358
Feasterville, PA 19053-0358

215-957-4547
Fax 215-396-3320

October 2, 2013

Mr. Kyle Rainey, DW-6872
SCI Dallas
1000 Follies Road
Dallas, PA 18612

CONFIDENTIAL

RE: PA vs. Kyle Rainey
Our # 481 CR 07338

Dear Mr. Rainey:

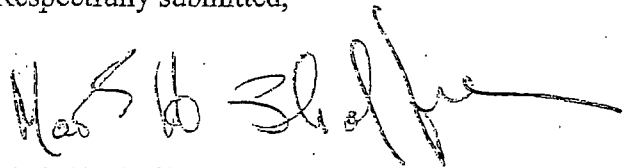
One aspect concerned obtaining the "real" name of Al Asim Karim, born December 23, 1939.

Investigation has identified one Elvin Odoms, born December 23, 1939, who formerly lived at 5225 Addison Street, Philadelphia, PA.

Running his criminal record, I found one case in Philadelphia. Original charges were on the Municipal Court level and the moved up to the Court of Common Pleas. Attached are the docket sheets. I have not ordered the physical files from storage.

The investigation is ongoing, as assigned.

Respectfully submitted,



Mark H. Shaffer, M.A. (Psych.)
Licensed Private Investigator

MHS

Attachments

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY



DOCKET

Docket Number: CP-51-CR-0516251-1974

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

Page 1 of 2

v.

Elvin Odoms

CASE INFORMATION

Judge Assigned: Halbert, Marvin R.

Date Filed: 05/28/1974

Initiation Date: 05/28/1974

OTN:

LOTN:

Originating Docket No: MC-51-CR-0500911-1974

Initial Issuing Authority:

Final Issuing Authority:

Arresting Agency: Philadelphia Pd

Arresting Officer: Affiant

Complaint/Incident #:

Case Local Number Type(s)

Case Local Number(s)

Police Incident Number

7406022088

Legacy Microfilm Number

75002205

District Control Number

7406022088

Legacy Docket Number

C7405162511

STATUS INFORMATION

Case Status: Closed

Status Date

Processing Status

Arrest Date: 05/07/1974

01/31/1975

Completed

05/28/1974

Migrated Case (Active)

Complaint Date: 05/28/1974

DEFENDANT INFORMATION

Date Of Birth:

12/23/1939

City/State/Zip: PHILA., PA 19100

Alias Name

Odomes, Elvin

CASE PARTICIPANTS

Participant Type

Name

Defendant

Odoms, Elvin

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1		18 § 4101	FORGERY	05/06/1974	
2	2		18 § 3925	THEFT BY RECEIVING STOLEN PROPERTY	05/06/1974	

DISPOSITION SENTENCING/PENALTIES

Disposition

Disposition Date

Final Disposition

Case Event

Offense Disposition

Grade Section

Sequence/Description

Sentence Date

Credit For Time Served

Sentencing Judge

Incarceration/Diversionary Period

Start Date

Sentence/Diversion Program Type

Sentence Conditions

Migrated Disposition

Defendant Was Not Present

01/31/1975

Final Disposition

Migrated Dispositional Event

Printed: 01/04/2016

CPCMS 9082

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assume any liability for inaccurate or delayed data, errors or omissions on these reports. Docket Sheet Information should not be used in place of a criminal history background check which can only be provided by the Pennsylvania State Police. Moreover an employer who does not comply with the provisions of the Criminal History Record Information Act may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0516251-1974

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

Page 2 of 2

v.

Elvin Odoms

DISPOSITION: SENTENCING/PENALTIES

Disposition	Disposition Date	Final Disposition
<u>Case Event</u>	<u>Offense Disposition</u>	<u>Grade</u> <u>Section</u>
<u>Sequence/Description</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>
<u>Sentencing Judge</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>
<u>Sentence/Diversion Program Type</u>		
<u>Sentence Conditions</u>		
1 / FORGERY	Nolle Prossed	18 § 4101
Halbert, Marvin R.	01/31/1975	
2 / THEFT BY RECEIVING STOLEN PROPERTY	Guilty Plea	18 § 3925
Halbert, Marvin R.	01/31/1975	
Probation	2.00 Years	

COMMONWEALTH INFORMATION

Name: Philadelphia County District Attorney's
Office
Prosecutor

Supreme Court No:
Phone Number(s):
215-686-8000 (Phone)

Address:
3 South Penn Square
Philadelphia, PA 19107

ATTORNEY INFORMATION

Name: Defender Association of
Philadelphia
Public Defender

Supreme Court No:
Rep. Status: Active
Phone Number(s):
Address:
Packard Building
1441 Samson Street
Philadelphia, PA 19102

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1	05/28/1974		
Held for Court			
1	01/31/1975		
Migrated Automatic Registry Entry (Disposition) Text			
2	01/31/1975		
Disposition Filed			
3	01/31/1975		
Migrated Sentence			

Printed: 01/04/2016

CPCMS 9092

Recent entries made in the court filing offices may not be immediately reflected on these docket sheets. Neither the courts of the Unified Judicial System of the Commonwealth of Pennsylvania nor the Administrative Office of Pennsylvania Courts assume any liability for inaccurate or delayed data, errors or omissions on these reports. Docket Sheet Information should not be used in place of a criminal history background check which can only be provided by the Pennsylvania State Police. Moreover an employer who does not comply with the provisions of the Criminal History Record Information Act may be subject to civil liability as set forth in 18 Pa.C.S. Section 9183.

INVESTIGATION INTERVIEW RECORD		PHILADELPHIA POLICE DEPARTMENT HOMICIDE DIVISION		CASE NO. H94-178	
				INTERVIEWER Det BUCKLEY #9282	
NAME AL-ASIM M. ABDUL-KARIM		AGE 54	RACE B/M	DOB 12-23-39	
ADDRESS		APARTMENT NO.		PHONE NO.	
IT/SCHOOL				SOC. SEC. NO. unknown	
MENT/SCHOOL		DEPARTMENT Construction		PHONE NO. same	
DATES OF PLANNED VACATIONS N/A					
DATES OF PLANNED BUSINESS TRIPS N/A					
NAME OF CLOSE RELATIVE OTHER)					
PHONE NO.					
PLACE OF INTERVIEW Homicide Division				DATE 06-01-94	TIME 2:55PM AM PM
BROUGHT IN BY 14Th District Police				DATE 06-01-94	TIME AM PM
WE ARE QUESTIONING YOU CONCERNING The shooting death of Sun KANG 45 O/M inside 113 W. Chelten Ave on 06-01-94					
WARNINGS GIVEN BY				DATE	TIME AM PM
ANSWERS					
(1) (2) (3) (4) (5) (6) (7)					
Q.SIR, my name is Detective BUCKLEY and I am going to ask you some questions concerning					
the shooting death of Sun KANG. Are you willing to answer these questions?					
A.Yes					
Q.Are you known by any other names or nicknames?					
AJust AL.					
Q.How far did you go in school?					
A.2 years college					
Q.Can you read, write and understand the English Language?					
A.Yes					
Q.Are you presently under the influence of drugs or alcohol?					
A.No					
Q.Do you know the decedent?					
A.No					
RECORD <input type="checkbox"/> Yes <input type="checkbox"/> No		CHECKED BY			
REVIEWED BY					

FROM: KYLE RAINEY
(PETITIONER)
#DW-6872
1000 FOLLIES RD.
SCI. DALLAS. PA. 18612

KYLE RAINEY (PETITIONER)

VS.

DISTRICT ATTORNEY'S OFFICE
OF PHILADELPHIA, et.al;
(RESPONDENTS)

AFFIDAVIT FROM PETITIONER

I Petitioner Kyle Rainey, swear under the penalty of perjury, 18 Pa.C.S.A. 4902 * 4904. If I had known that Elvin Odoms had sworn in under oath under the fictitious name Al-Asim during both of my trials committing perjury under 4902; which is a felony of third degree. I would have moved for a criminal complaint being filed against this Commonwealth key witness.

The statements made herein are true and correct to the best of my personal knowledge, and belief, under the penalty of perjury and/or unsworn falsification to authorities as to finding by PA.S.C.A. Title 18 4902 * 4904.

Respectfully Submitted
Kyle Rainey
Kyle Rainey, (Petitioner)

Dated: 4 / 5 / 2017.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LUZERNE
SWORN TO AND SUBSCRIBED BEFORE
ME THIS 5 DAY OF April, 2017

Commonwealth of Pennsylvania

NOTARIAL SEAL
Lori M Richards, Notary Public
Jackson Twp, Luzerne County
My Commission Expires August 20, 2020

Lori M. Richards

GORSON & GORSON, P.C.

ATTORNEYS AT LAW

1845 WALNUT STREET

SUITE 1300

PHILADELPHIA, PENNSYLVANIA 19103

NOAH GORSON
NG@GORSONLAW.COM

MAXWELL P. GORSON
MPG@GORSONLAW.COM

(215) 569-4661

FAX (215) 545-2642

NEW JERSEY OFFICE
TEN GROVE STREET
HADDONFIELD, NJ 08033

MEMBERS PA. & N. J. BARS

December 9, 2014

Attorney - Client From Noah Gorson, Esq.
Kyle Rainey
No. DW-6872
SCI-Dallas
1000 Follies Road
Dallas, PA 18612-0286

Dear Kyle:

I am enclosing the 2 affidavits we discussed - I think I have the right docket numbers after checking with the court - I enclose a copy of the court summaries, as well. Good luck with your efforts.

Very truly yours,



NOAH GORSON

Gorson & Gorson, P.C.
By: Noah Gorson, Esquire
Identification No. 34323
1845 Walnut Street Suite 1300
Philadelphia, PA 19103
(215) 569-4661

KYLE RAINEY (Pro Se)

VS

:
:
:
:
:
:

AFFIDAVIT IN SUPPORT OF PETITIONER

I, Noah Gorson, being duly sworn according to law do hereby depose and say:

(1). I am an attorney admitted to practice in the Commonwealth of Pennsylvania and State of New Jersey;

(2). I represented Kyle Rainey for the purpose of appealing a judgment of sentence of the Court of Common Pleas of Philadelphia County dated October 17, 1995 July Term, 1994 No. 0834.

(3). The appeal raised issues of Federal and Pennsylvania State Constitutional merit including the fundamental fairness of Mr. Rainey's trial in the Philadelphia County Court of Common Pleas;

(4). It has been brought to my attention that an investigator hired by Petitioner discovered that a Commonwealth witness, identified as "Al-Asim", was actually an individual named "Elvin Odoms" and had a criminal record which could have been used at trial to question his credibility and raise reasonable doubt.

(5). If I had been previously aware of this potential *Brady* violation I would have raised it on appeal..

The statements made herein are true and correct to the best of my personal knowledge, experience and belief, under the penalty of perjury and/or unsworn falsification to authorities as to finding by Pa. C.S.A. Title 18 Sections 4902 & 4904.



NOAH GORSON, ESQUIRE

Gorson & Gorson, P.C.
By: Noah Gorson, Esquire
Identification No. 34323
1845 Walnut Street Suite 1300
Philadelphia, PA 19103
(215) 569-4661

KYLE RAINEY (Pro Se)

VS


:
:
:
:
:
:

AFFIDAVIT IN SUPPORT OF PETITIONER

I, Noah Gorson, being duly sworn according to law do hereby depose and say:

- (1). I am an attorney admitted to practice in the Commonwealth of Pennsylvania and State of New Jersey;
- (2). I represented Kyle Rainey for the purpose of trial and appeal in the Court of Common Pleas of Philadelphia County Docket CP 51 CR 1003961-1994.
- (3). The appeal raised issues of Federal and Pennsylvania State Constitutional merit including the fundamental fairness of Mr. Rainey's trial in the Philadelphia County Court of Common Pleas;
- (4). It has been brought to my attention that an investigator hired by Petitioner discovered that a Commonwealth witness, identified as "Al-Asim", was actually an individual named "Elvin Odoms" and had a criminal record which could have been used at trial to question his credibility and raise reasonable doubt.
- (5). If I had been previously aware of this potential *Brady* violation I would have raised it on appeal..

The statements made herein are true and correct to the best of my personal knowledge, experience and belief, under the penalty of perjury and/or unsworn falsification to authorities as to finding by Pa. C.S.A. Title 18 Sections 4902 & 4904.



NOAH GORSON, ESQUIRE

FROM: KYLE RAINEY
(PETITIONER)
#DW-6872
1000 FOLLIES.RD.
DALLAS.PA. 18612

KYLE RAINEY (PETITIONER)

VS.

DISTRICT ATTORNEY'S OFFICE
OF PHILADELPHIA, et.al,
(RESPONDENTS)

AFFIDAVIT FROM (PETITIONER)

I Petitioner Kyle Rainey, asserts, that on June 2, 2017, I received an obituary of Elvin Odoms from my licensed Private Investigator named Mark H. Shaffer. The photo obituary establishes that this is the same individual/witness whom testified against me in both of my criminal trial's under the fictitious name Al-Asim M. Abdul-Karim, DKT.NO.CP-51_CR-0708341-1994, and DKT.CP-51-CR-1003961-1994.

Respectfully Submitted
Kyle Rainey
Kyle Rainey (Petitioner)

Dated: 6/14/2017.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LUZERNE
SWORN TO AND SUBSCRIBED BEFORE
ME THIS 14 DAY OF JUNE, 2017

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Susan Williams, Notary Public
Luzerne County
My Commission Expires Feb 8, 2021

Susan Williams

Mark H. Shaffer, P.I.

Waldman&Associates

P.O. Box 358
Feasterville, PA 19053-0358

www.waldmanpi.com

Office 267-269-2555

Fax 215-396-3320

Cell 267-269-2555

E-Mail: markshaffer@waldmanpi.com

February 25, 2015

Todd M. Mosser, Esq.
The Law Office of Todd Mosser, PLLC
2 Penn Center, Suite 1723
Philadelphia, PA 19102

Via email only: todd@mosserlegal.com

RE: PA vs. Kyle Rainey
CP-51-CR-1003961-1994
Major Charge Robbery
Our # 481 CR 07338

Dear Mr. Mosser:

I have received your email as to the rationale of my conclusion that Elvin Odoms and Al Asim Karim are the same individual and that Karim is a pseudonym for Odoms.

- Both are associated to 5225 Addison Street, Philadelphia, PA 19143.
- Both are shown as a relative of Katherine Odoms.
- Both are shown as having been born in December 1939. I have already forwarded to you the birth certificate on Odoms. I find no record the Karim ever existed. I can, if you wish, confirm a "no record" with the PA Department of Health as to there being no birth record or with the Social Security Administration of "no record".

Of course, I can go to the Odoms' residence, and confront him.

Mr. Rainey's theory of appeal, which I agree with, is the Philadelphia District Attorney had a witness testify when the DA knew he was not the person he testified he was but was a different person with a felony record that was never disclosed to the defense.

Respectfully submitted,

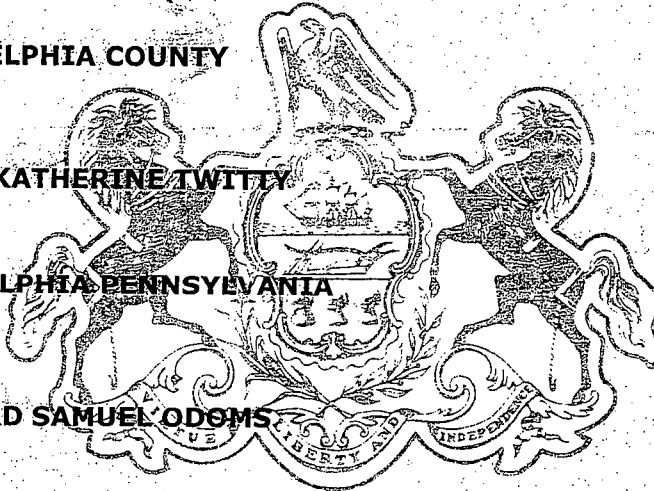
Mark H. Shaffer, MA (Psych.)
Licensed Private Investigator

CC: Kyle Rainey via USPS
#DW6872
SCI Dallas
1000 Follies Road
Dallas, PA 18612

VITAL RECORDS

WARNING: IT IS ILLEGAL TO DUPLICATE THIS COPY BY PHOTOSTAT OR PHOTOGRAPH.

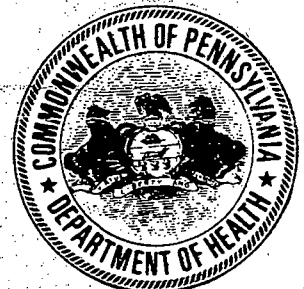
Certification of Birth

Date of Birth: **DECEMBER 23, 1939**State File Number: **153584-1939**Date Issued: **JANUARY 13, 2014**Date Filed: **JANUARY 02, 1940**Name: **ELVIN ODOMS**Sex: **MALE**Place of Birth: **PHILADELPHIA COUNTY**Mother's Maiden Name: **KATHERINE TWITTY**Age: **28**Place of Birth: **PHILADELPHIA PENNSYLVANIA**Father's Name: **BERNARD SAMUEL ODOMS**Age: **29**Place of Birth: **SOUTH CAROLINA**

This is to certify that this is a true copy of the record which is on file in the Pennsylvania Department of Health, in accordance with the Vital Statistics Law of 1953, as amended.

Marina O'Reilly Matthew

Marina O'Reilly Matthew
State Registrar



THE DOCUMENT FACE CONTAINS A YELLOW BACKGROUND AND EMBOSSED SEAL.
THE BACK CONTAINS SPECIAL LINES WITH TEXT.

H105.105.1D Rev. (7/2012)

WARNING: THIS DOCUMENT IS PRINTED ON SECURITY WATERMARKED PAPER.
DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARK.



0001117011

DETACH HERE

TEAR AT THIS PERFORATION

DETACH HERE

APPLICANT ON FILE

Order Number: **20140113639**

19053



Richard T. Strohm & Associates
Investigations & Data Services

2509 So. Broad Street – Suite 203
Philadelphia, PA 19148
(215) 468-9969

5427 SW 22nd Place
Cape Coral, FL 33914
Fax: (215) 468-9971

September 12, 2008

Kylie Rainey
DW-6872
SCI Dallas
1000 Follies Rd.
Dallas, PA 18612

Dear Mr. Rainey:

I am in receipt of your letter postmarked 8-21-08 in which you requested our services to look into the Crime Commission's files regarding the reward in this case.

First let me say that I cannot guarantee you anything regarding the Crime Commission's files because they are strictly confidential. And, if this Mr. Abdul Karim had received any money, then the district attorney would have had to bring that out in court. Furthermore, it would have been the Crime Commission's duty to tell the judge that the district attorney allowed Abdul Karim to lie about receiving the funds.

Please be advised that I did look into Abdul Karim's name but I found nothing on it. Your trial attorney should have that information along with his criminal record, if any.

In closing, I would like to say that I could guarantee you something but I cannot. Therefore, in all sincerity I cannot be of any assistance to you. Good Luck!

Sincerely,



Richard T. Strohm
President

RTS:es

Richard T. Strohm & Associates
Investigations & Data Services

2509 So. Broad Street – Suite 203
Philadelphia, PA 19148
(215) 468-9969

5427 SW 22nd Place
Cape Coral, FL 33914
Fax: (215) 468-9971

September 26, 2008

Kylie Rainey
DW-6872
SCI Dallas
1000 Follies Rd.
Dallas, PA 18612

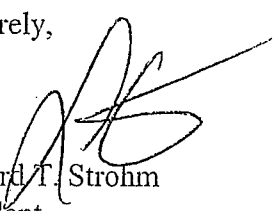
Dear Mr. Rainey:

Please be advised that there is no one with the name of Al Asim M. Abdul Karim, DOB: 12-23-1939 or any date of birth, as have been being arrested at all.

I am sorry that we can't be of any further assistance to you.

This will be our final correspondence with you.

Sincerely,



Richard T. Strohm
President

RTS:es

11/30/07

Mr. Kyle Rainey,

We were unable to obtain the information that you have requested in your letter. We were unable to find Mr. Abdul-Karim's ^{exact} address or validate his actual name. In regards to the shooting I was also unable to obtain any information, I apologize. Your check is attached. We were able to locate Bernard Odoms & we tried to conduct a reverse search & heir search on him, so that we could locate Al-Asim but we had negative results. If there is anything that we could possibly help you w/ please don't hesitate to send another request.

Thank you,



Spartan Detective Agency

Pennsylvania State Police

1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Response for Criminal Record Check

KYLE RAINEY DW-6872
1000 FOLLIES RD
DALLAS PA 18612

TO WHOM IT MAY CONCERN:

THE PENNSYLVANIA STATE POLICE DOES HEREBY CERTIFY THAT:

Name: ABDUL-KARIM, ALASIM M
Date of Birth: 12/23/1939
Social Security #:
Sex: Unknown
Race: Unknown
Date of Request: 1/29/2010 12:00:00AM
Purpose of Request: Other

Maiden Name and/or Alias (1) (2)
(3) (4)

***** HAS NO CRIMINAL RECORD IN PENNSYLVANIA BASED ON A CHECK BASED ON THE
ABOVE IDENTIFIERS - REFER TO CONTROL # M0464300*****

THE RESPONSE IS BASED ON A COMPARISON OF DATA PROVIDED BY THE REQUESTER AGAINST INFORMATION CONTAINED IN THE FILES OF THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY ONLY. PLEASE CONFIRM IDENTIFIERS PROVIDED. POSITIVE IDENTIFICATION CANNOT BE MADE WITHOUT FINGERPRINTS. THE PENNSYLVANIA STATE POLICE RESPONSE DOES NOT PRECLUDE THE EXISTENCE OF CRIMINAL RECORDS, WHICH MIGHT BE CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCIES.

☐ COMPARISON MADE WITH FINGERPRINTS

THIS INFORMATION ON THIS CERTIFICATION FORM CAN BE VALIDATED BY ACCESSING THE PENNSYLVANIA ACCESS TO CRIMINAL HISTORY (PATCH) RECORD CHECK STATUS SCREEN (<http://epatch.state.pa.us/PATCH/RCStatusSearch.jsp>) AND SUBMITTING A STATUS CHECK REQUEST THAT CONTAINS THE FOLLOWING - SUBJECT'S NAME (EXACTLY AS INITIALLY ENTERED), CONTROL NUMBER AND DATE OF REQUEST. PATCH WILL FIND AND DISPLAY THE CORRESPONDING RECORD CHECK REQUEST. DETAILS ON THE REQUEST CAN BE VIEWED BY CLICKING ON THE CONTROL NUMBER. YOU WILL BE ABLE TO VERIFY IF THIS REQUEST WAS SENT OUT AS A NO RECORD OR RECORD RESPONSE BY THE

QUESTIONS CONCERNING THIS CRIMINAL RECORD CHECK SHOULD BE DIRECTED TO THE PATCH HELP LINE TOLL FREE AT 1-888-QUERY-PA (1-888-783-7972) OR 717-425-5546 LOCALLY.

CERTIFIED BY:

LT Michael F Gillelan

Lieutenant Michael F. Gillelan
DIRECTOR, CRIMINAL RECORDS AND IDENTIFICATION DIVISION
PENNSYLVANIA STATE POLICE

DISSEMINATED BY: 088014

02/02/2010

PENNSYLVANIA STATE POLICE

1800 Elmerton Avenue
Harrisburg, Pennsylvania 17110

Control # **M11590141**

REQUEST FOR CRIMINAL RECORD CHECK

**KYLE RAINEY
1000 FOLLIES RD
DALLAS PA 18612**

TELEPHONE (000) 000-0000

TO WHOM IT MAY CONCERN:

THE PENNSYLVANIA STATE POLICE DOES HEREBY CERTIFY THAT:

Name: ODOMS, ELVIN

Social Security #:

Date of Birth: 12/23/1939

Sex: M

Race: Black

Date of Request: 10/23/2013 12:00:00AM

Purpose of Request: Other

Maiden Name and/or Alias (1) ODOMES, ELVIN

(2)

(3)

(4)

***** HAS A CRIMINAL RECORD IN PENNSYLVANIA BASED ON A CHECK OF THE ABOVE IDENTIFIERS - CRIMINAL RECORD FOR SID NO: 104-74-37-0 ATTACHED *****

THE INFORMATION DISSEMINATED BY THE CENTRAL REPOSITORY IS BASED SOLELY ON THE FOLLOWING IDENTIFIERS THAT MATCH THOSE FURNISHED BY THE REQUESTER:

☒ **NAME** ☐ **SOCIAL SECURITY NUMBER** ☐ **MAIDEN / ALIAS NAME**
☒ **DATE OF BIRTH** ☒ **RACE** ☒ **SEX**

THE RESPONSE IS BASED ON A COMPARISON OF DATA PROVIDED BY THE REQUESTER AGAINST INFORMATION CONTAINED IN THE FILES OF THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY ONLY. PLEASE CONFIRM IDENTIFIERS PROVIDED. POSITIVE IDENTIFICATION CANNOT BE MADE WITHOUT FINGERPRINTS. THE PENNSYLVANIA STATE POLICE RESPONSE DOES NOT PRECLUDE THE EXISTENCE OF CRIMINAL RECORDS, WHICH MIGHT BE CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCIES.

☐ **COMPARISON MADE WITH FINGERPRINTS**

ADDITIONAL INFORMATION MAY BE AVAILABLE FROM QUERIES OF OTHER STATE AND FEDERAL DATABASES.

☐ **SEE WEBSITE:** <http://www.casanet.org/program-management/volunteer-manage/criminal-bkg-check.htm>

☐ **PENNSYLVANIA'S MEGAN'S LAW WEB SITE AT:** <http://www.pameganslaw.state.pa.us>

QUESTIONS CONCERNING THIS CRIMINAL RECORD CHECK SHOULD BE DIRECTED TO THE PATCH HELP LINE TOLL FREE AT 1-888-OUERY-PA (1-888-783-7972)

CERTIFIED BY:

DISSEMINATED BY: 459688

11/01/2013

Lieutenant Kevin J. Deskiewicz

DIRECTOR, CRIMINAL RECORDS AND IDENTIFICATION DIVISION
PENNSYLVANIA STATE POLICE

PENNSYLVANIA STATE POLICE
CENTRAL REPOSITORY
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110
(717) 787-9092

=====

USE OF THE FOLLOWING CRIMINAL HISTORY RECORD *** SID 104-74-37-0 ***
REGULATED BY ACT 47, AS AMENDED.

=====

IDENTIFICATION

NAME: ODOMS, ELVIN
SID: 104-74-37-0 DOB: 1939/12/23 SOC: XXX-XX-2039
SEX: MALE RAC: BLACK HAI: BROWN EYE: BROWN
HGT: 5'11" WGT: 162
POB: PENNSYLVANIA US CITIZEN: YES
COUNTRY OF CITIZENSHIP: UNITED STATES

=====

CRIMINAL HISTORY

NAME: ODOMS, ELVIN OTN: Z964656-0
ARRESTED: 1974/05/06 PAPEP0000 PHILADELPHIA OCA: 456028
DISPO DATE: 1975/01/31 COMMON PLEAS DOCKET: CP-51-CR-0516251-1974

OFFENSE DATE	CHARGE	COUNT	GRADE	DISP CHG	DISPOSITION
-----	-----	-----	-----	-----	-----
1974/05/06	CC3925 RECEIVING STOLEN PROPERTY	1			PLEAD GUILTY/ COUNTY PROBATION/ 002 YRS

=====

ADDITIONAL IDENTIFIERS

AKAs:
DOBs:
SOCs:
MNUs:

=====

F=FELONY, M=MISDEMEANOR, S=SUMMARY AND THE NUMERIC=DEGREE
ARREST(S) SUPPORTED BY FINGERPRINT CARD(S) ON FILE

RESPONSE BASED ON COMPARISON OF REQUESTER FURNISHED INFORMATION AND/OR
FINGERPRINTS AGAINST A NAME INDEX AND/OR FINGERPRINTS CONTAINED IN THE FILES OF
THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY ONLY, AND DOES NOT PRECLUDE
THE EXISTENCE OF OTHER CRIMINAL RECORDS WHICH MAY BE CONTAINED IN THE
REPOSITORIES OF OTHER LOCAL, STATE, OR FEDERAL CRIMINAL JUSTICE AGENCIES.

***** END OF RAP SHEET *****

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

KYLE RAINEY

: CIVIL ACTION

vs.

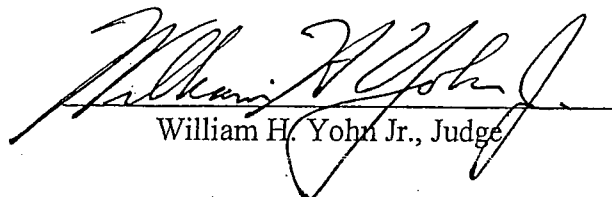
FILED JUL 30 2007

JAMES T. WYNDER

: NO. 06cv4789

ORDER

AND NOW, this 30th day of July, 2007, upon consideration of petitioner's motion pursuant to Federal Rule of Criminal Procedure 6(E)(3)(C) which applies to federal grand jury proceedings and permits the attorney for the government to disclose any grand jury matter to another federal grand jury, and petitioner requesting the court to direct the District Attorney of Philadelphia to produce all evidence in their possession, or available to them, concerning Al-Asim. Abdul Karim, **IT IS HEREBY ORDERED** that the motion is **DENIED** as completely without merit, but without prejudice to the right of the petitioner to seek the information which he requests either directly from the District Attorney of Philadelphia or through the state court criminal justice system


William H. Yohn Jr., Judge

ENTERED

JUL 31 2007

CLERK OF COURT

*Adopted this motion.
(see last page)*

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY,

CRIMINAL TRIAL DIVISION,

KYLE RAINEY (PETITIONER)

OCT TERM, 1994, NO.0396 1/1

CP.NO.CR-51-CR-1003961-1994

VS.

DISTRICT ATTORNEY OFFICE,

OF PHILADELPHIA, ET AL,

RECEIVED

NOV 26 2007

PCRA UNIT

PETITION-MOTION IN SUPPORT

FOR MOTION FOR DISCOVERY PURSUANT TO PA.R.CRIM.P.902(e)

TO: THE HONORABLE C. DARNELL JONES, JUDGE OF THE SAID COURT:

(1). The Petitioner presently has a [PCRA] petition pending before this Honorable Court regarding after-discovered evidence in the form of eyewitness exculpatory testimony.

(2). The Petitioner is presently represented by assigned counsel Sondra Rodrigues, Esq.

(3). On July 31, 2007, The Honorable Senior District William H. Yohn Jr., denied petitioner's pro-se, motion-petition for discovery without prejudice to petitioner's right to seek it in state court, that order is presently pending before this Honorable Court;

(4). Furthermore, this Honorable Court has scheduled oral arguments on this discovery request for Nov 26, 2007.

(5). Therefore, the Petitioner Kyle Rainey humbly request that this Honorable Court consider the enclosed arguments in support for his requested discovery that petitioner is entitled to, and does has/had a right to know.

THE PETITIONER KYLE RAINEY IS ENTITLED TO KNOW WHETHER AL-ASIM M. ABDUL KARIM RECEIVED ANY OR ALL THE KOREAN COMMUNITY ORGANIZATION-KOREAN BUSINESSMAN ASSOCIATION, REWARD MONEY OFFERED ON THE JUNE 1, 1994, SUN KANG SHOOTING DEATH 45 O/M INSIDE 113 W. CHELTEN AVE. PHILADELPHIA SECTION, WHICH THE PETITION KYLE RAINEY WAS TRIED AND CONVICTED BY JURY ON MAY 8, THROUGH 24, 1995, PRESIDED OVER BY SENIOR JUDGE JOHN J. POSERINA.

(1). First, Al-Asim M. Abdul Karim, was a major Commonwealth witness against Petitioner Kyle Rainey in the June 1, 1994, incident, as well as the Bright Jewelry Store incident, that is before this Honorable Court.

(2). Secondly, [Noted] for the record Al-Asim M. Abdul Karim only witness the June 1, 1994, incident, not the Bright Jewelry Store March 26, 1994, incident.

(a). However, thereafter the June 1, 1994, murder-robbery, the Korean Community Organization-Korean Businessman Association offered a \$5000 thousand dollars reward for the capture and conviction of the individuals of the June 1, 1994, incident.

(b). Moreover, Al-Asim. M. Abdul Karim testified against Petitioner Kyle Rainey, first in the June 1, 1994, homicide-robbery incident, which petitioner was subsequently convicted and sentence to [Life-plus (6) to (12)yrs].

(c). The Petitioner was convicted in the month of May 1995, and sentenced in Oct of 1995.

(d). During trial of the homicide-robbery June 1, 1994, incident Al-Asim denied receiving any of the Korean Community-Korean Businessman Association reward money that was offered in the sum of \$5000 Thousand dollars.

(e). Next, the Petitioner Kyle Rainey proceeded to trial on Oct 25, 1995, before the Honorable Darnell Jones, presiding before a jury trial. The Commonwealth argue to introduce the Petitioner conviction for the homicide-robbery June 1, 1994, incident, Sun Kang Jewelry Store, matter, which was [granted] in part, by allowing the gun, handcuffs, and Al-Asim M. Abdul Karim testifying to what he allegedly seen the Petitioner Kyle Rainey do in the June 1, 1994, incident.

ARGUMENTS

(1). The Petitioner Kyle Rainey respectfully submits that he is entitled to know whether Al-Asim M. Abdul Karim received the Korean Community Organization-Korean Businessman Association reward money in the sum of \$5000 thousand dollars, and furthermore humbly submits while 557 Pa. 224, the Commonwealth's obligation under Brady, continues through all stage of judicial process. See. Pennsylvania vs. Ritchie, 480 U.S. 39, 59, 107 S.Ct 989 (1987).

(2). Furthermore, if it fact Al-Asim M. Abdul Karim received any or all the Korean Community Organization-Korean Businessman Association reward money in the sum of \$5000 thousand dollars, from the June 1, 1994 murder-robbery, the Petitioner Had/has a right to know before Al-Asim M. Abdul Karim testified against the Petitioner in the Bright Jewelry Store incident, which occurred on March 26, 1994.

APPLICABLE CASE LAW

See. Pennsylvania vs, Ritchie, 107 S.Ct 989 (1987), which states, we find that Ritchie's interest (as well as that of the Commonwealth) ensuring a fair trial can be protected fully by requiring that in CYS files be submitted only to the trial court for in-camera review.

Although this rule denies Ritchie the benefits of an "advocate's eye," we note that the trial court's discretion is not unbounded. If a defendant is aware of specific information contained in the e.g. the medical report), he is free to request it directly from the court, and argue in favor of its materiality.

Moreover, "the duty to disclose is ongoing", information that may be deemed immaterial as the proceedings progress, and the court would be obligated to [release] information material to the fairness of the trial.

Continuing, In Ritchie, we agree the Ritchie is entitled to know whether the CYS file contains information that may have changed the outcome of his trial had it been disclosed. Thus we agree that a remand is necessary.

We disagree with the decision of the Pennsylvania Supreme Court to the extent that it allows defense counsel access to the CYS file, An in-camera review by the trial court will serve Ritchie's interest without destroying the Commonwealth's need to protect the confidentiality of those involved in child abuse investigations. The Judgment of the Pennsylvania Supreme Court is affirmed in part and reversed in part, and the case is remanded for further proceedings not inconsistent with this opinion.

ARGUMENTS

(a). Furthermore, the Petitioner "Kyle Rainey" had/has a right to "know" Al-Asim M. Abdul Karim, true and correct name.

(b). WHEN THIS MAJOR COMMONWEALTH WITNESS SPOKE TO HOMICIDE DETECTIVES HE IDENTIFIED HIMSELF AS AL-ASIM M. ABDUL KARIM AGE-54 B/M DATED OF BIRTH 12-23-39, SELF EMPLOYED, SOCIAL SECURITY NUMBER, HE CLAIMED UNKNOWN, ADDRESS 5225 ADDISON ST. PHILA.PA.19143.

HE ALSO STATED HE HAS A BROTHER NAME BERNARD ODOM JR. ADDRESS, 5920 DEVON PLACE, PHILADELPHIA SECTION.

(c). THEREFORE THE PETITIONER KYLE RAINEY RESPECTFULLY SUBMITS THAT HE HAS A "RIGHT TO KNOW" AL-ASIM M. ABDUL KARIM, CORRECT NAME, WHICH THE PETITIONER HUMBLY SUBMITS THAT THIS MAJOR COMMONWEALTH WITNESS MOTHER DID NOT NAME HIM THIS [ISLAMIC] NAME AL-ASIM M. ABDUL KARIM, FURTHERMORE, THIS WITNESS HAS CHANGED HIS [IDENTITY] BY CHANGING HIS NAME.

(d). Moreover, the Petitioner Kyle Rainey "does has a right to Know," this major commonwealth witness true and correct name, and the Commonwealth obligation under Brady, continues through all stage of judicial process. See. Pennsylvania vs. Ritchie, 480 U.S. 39, 59. (1987).

(e). A discovery request is required to be stated in petition (See..Pa.Crim.P.Rule 902(a)(16)(formerly 1502), but Judge will often entertain a subsequent motion.

REQUESTED RELIEF

WHEREFORE, the foregoing reasons-facts, the Petitioner respectfully submits that the Honorable Darnell Jones does has authority to [grant] petitioner's discovery request, under 902(a)(16). (Same)(See). Pennsylvania vs. Ritchie, 480 U.S. 39 (1987), and humbly submits that the Commonwealth's obligation under (Same). Brady, continues through all stage of judicial process.

FOR THIS RELIEF PETITIONER PRAY.

Respectfully Submitted,

Kyle Rainey

Kyle Rainey, Petitioner

DW-6872

1000 FOLLIES.RD.

DALLAS.PA.18612

SERVED UPON

CC:KR:

TO: MY ASSIGNED COUNSEL

MS. SONDR A RODRIGUES ESQ.

DATED: NOV 20, 2007

AND: DISTRICT ATTORNEY OFFICE:

Counsel accepts
the petitioners
motion
J. Rodriguez
11/20/07

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

KYLE RAINEY (PETITIONER)

CIVIL ACTION.NO.06-cv-4789

VS.

JAMES T. WYNDER, ET AL.
(RESPONDENT(S))

PETITION-MOTION PURSUANT TO FEDERAL RULES OF CRIMINAL PROCEDURE UNDER 6(E)(3)(C) WHICH PERMITS THE HONORABLE SENIOR DISTRICT JUDGE [AUTHORITY] TO [GRANT] PETITIONER'S REQUEST FOR THE REQUESTED INFORMATION.

TO: THE HONORABLE SENIOR DISTRICT J. WILLIAM H. YOHN. JR.

(1). The Petitioner presently has a petition under Fed.R.Civ.P.60(b)-and Article (3)-and 2243, pending before the Honorable Court. See order Attached.

(2). ,Next, the petitioner's procedural history is fully developed before this Honorable Court, in all related Docket NO.00-2086, 01-cv-4789, which are the subject of this motions.

(3). The Petitioner Kyle Rainey is a pro se litigant, and his pleadings are to be construed liberally and held to a less stringent standards than pleadings drafted by lawyers. See. Haines vs. Kerner, 404 U.S. 519,520 (1972).

(4). Thus, the Petitioner Kyle Rainey pro se, humbly request this Honorable Court [direct] the district attorney office of Philadelphia "produce" all evidence in their possession, or available to them, concerning Mr. Al-Asim. Abdul Karim, correct birth name, and any criminal abstract on this commonwealth witness, and any prior arrest or convictions.

(5). The Petitioner humbly submits that this information was withheld from him during the course of his criminal trials, before and after. The Petitioner would also like to know has Al-Asim. Abdul Karim, received and Korean Community reward money, if so, how much and when. The Petitioner respectfully submits that he should be provided with this information, so he can investigate and continue to investigate this matter.

(6). [Noted] for the record, Al-Asim Abdul Karim, was a significant witness in both matters, which he testified in the June 1, 1994, Sun Kang Jewelry Store, and in the Bright Jewelry Store matter. Also noted for the record the Sun Kang Jewelry Store matter, is presently pending before the Honorable District judge Timothy J. Savage Civil Action.NO.-01-cv-623, which therefore makes federal jurisdiction available, when the demands for the requested material does not seek to upset a conviction. Or if the documents are relevant to some other pending case, then authority to [consider] a request for access may be supplied by ancillary jurisdiction. See. U.S. vs. Scott, 414 F.3d 815 (C.A. 7(iii) 2005). (Same) U.S. vs. Baggot, 463 U.S. 476 (1983).

(7). (Same). U.S. vs. Campbell, (2), 324 F.3d 497 (C.A. 7 (Wis) 2003), which states, that a petitioner is entitled under a Rule 6(E)(3)(C) motion which permits a district court to [authorize] disclosure of grand jury material for use in other judicial proceedings.

When a person wants to employ the grand jury material in other litigation, then subject-matter jurisdiction for this flavor of third-party discovery is supplemental to the jurisdiction to resolve that other suit.

If there is a pending or impending material under a Rule 6(E)(3)(C) motion.

CONCLUSION

WHEREFORE, the foregoing reasons-facts, the petitioner humbly submits that he is entitled to the requested information requested under Rule 6(E)(3)(C) in this petition-motion. (1). Al-Asim. Abdul Karim, correct name, to investigate any criminal abstract concerning this commonwealth witness.

(2). Next, concerning Al-Asim, receiving any Korean Community Reward Money, if so, when. The Petitioner once again, humbly avers that Al-Asim, was a significant witness and testified in both petitioner's criminal cases, the June 1, 1994, matter, and the March 26, 1994, matter.

FOR THE REQUESTED RELIEF THE PETITIONER WILL FOREVER PRAY.

Respectfully Submitted,


Kyle Rainey, Petitioner pro-se,

SERVED UPON

DISTRICT ATTORNEY OFF.

CC:KR:

DATED: FILED: 7-6-07

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

KYLE RAINEY

: CIVIL ACTION

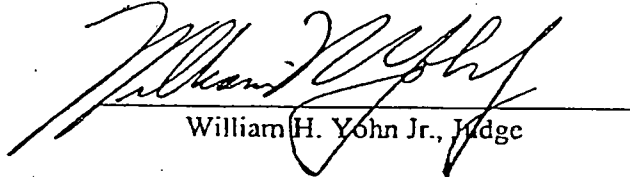
vs.

JAMES T. WYNDER

: NO. 06cv4789

ORDER

AND NOW, this 14th day of February, 2007, petitioner having filed an amended petition on January 19, 2007 (Document No. 4), **IT IS HEREBY ORDERED** that petitioner's original petition filed October 25, 2006 (Document No. 1) is **DISMISSED** as moot. The court will proceed to disposition of the amended petition.



William H. Yohn Jr., Judge

ENTERED

FEB 15 2007

CLERK OF COURT