

Path to Mumia's Freedom

by Rachel Wolkenstein

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A new legal action filed by Mumia Abu-Jamal in the Pennsylvania Court of Common Pleas on August 7, 2016 provides a path in the courts to overturn Mumia's conviction and win his freedom. The legal underpinning is the recent precedent-setting U.S. Supreme Court decision *Williams v. Pennsylvania*, 136 S.Ct. 1989 (2016), which holds *it is a violation of the due process right to an impartial tribunal free of judicial bias if a judge participating in a criminal appeal had "a significant personal involvement as a prosecutor in a critical decision" in a defendant's case.*

Ronald D. Castille was a senior Assistant District Attorney during Mumia's 1982 trial and the Philadelphia District Attorney during Mumia's direct appeal of conviction and death sentence. Ronald D. Castille was a Justice of the Pennsylvania Supreme Court during the entire period of Mumia's appeals of his post-conviction proceedings from 1995-2008.

Mumia made motions to Justice Castille to recuse himself from his post-conviction appeals to the Pennsylvania Supreme Court from 1996-98 and again in 2002 on grounds of bias and conflict of interest, but Castille refused. Mumia raised Castille's denial to recuse himself as an appeal issue in the federal courts, but it was ignored.

The District Attorney's office and Justice Castille did not disclose, or denied or minimized any direct role District Attorney Castille had as a prosecutor in capital prosecutions, including jury selection and other prosecutorial trial conduct and appeal strategy and preparation. As stated in the new filing, "The high profile and political sensitivity of Mr. Abu-Jamal's case, increases the likelihood that Justice Castille's minimization of his involvement in the case was not credible."

Castille's role as both prosecutor and judge in Mumia's case, in light of the *Williams* decision, opens the door to a court decision vacating (overturning and dismissing) all Pennsylvania Supreme Court denials of Mumia's post-conviction petitions. If this new legal action succeeds Mumia would get "do-overs" to the legal challenges he made to the racist frame-up conviction, for which he has now spent close to 35 years in prison, almost thirty in solitary confinement on death row.

This new legal action can lead to renewed challenges to all the state's unconstitutional racial, political and class biased procedures and state misconduct that resulted in Mumia's frame-up conviction before the pro-cop and racist judge Albert Sabo who declared before trial, "I'm going to help them fry the n----r."

Mumia's other challenges to his conviction include: Ineffective assistance of trial counsel; The prosecution's intentional exclusion of African-Americans from his jury; the Prosecution's summation argument that Mumia would have "appeal after appeal" depriving

Mumia of the constitutional standard of guilt beyond a reasonable doubt and the importance of the jury decision in determining guilt and a death sentence; Denying Mumia the right to self-representation and to be in the courtroom during his trial; Police and prosecutorial fabrication of evidence of guilt—false hospital confession, phony ballistics evidence, lying witnesses Cynthia White, Priscilla Durham, Robert Chobert—and suppression of evidence of Mumia’s innocence—Veronica Jones, Dessie Hightower, William Singletary, Ken Freeman, Arnold Howard and the confession of Arnold Beverly.

In other words, Mumia would be able to re-appeal the entirety of his frame-up conviction before the Pennsylvania Supreme Court. If the new appeal wins, Mumia will get a new trial, if not dismissal on grounds of gross state misconduct in prosecuting Mumia.

And should a new trial be ordered, the prosecution has no evidence to present against Mumia. The three legs of the case--eyewitnesses, confession and ballistics--have been proven to be manufactured by the police.

This is what should happen under the U.S. Supreme Court holding in *Williams*.

But Mumia’s case isn’t any case. There is no other case in the United States that has faced as much orchestrated hostility from the Fraternal Order of Police and both parties of U.S. capitalism as that of Mumia Abu-Jamal.

The legal and political caveats for a winning strategy to free Mumia: Legal action that underscores Mumia is innocent and framed in a political and racist prosecution that denied every aspect of due process and a fair trial; and an intensified international campaign of publicity and protest demanding Mumia’s freedom now!

Mumia’s case embodies the police terror and shootings on the streets, the false and frame-up prosecutions in the courts, the dehumanization and warehousing of mass incarceration, and the ultimate act of “legal” lynching in the racist death penalty.

Mass international protest kept Mumia alive

The state tried to kill Mumia on the street on December 9, 1981. They tried and failed to lynch him by state execution in 1995 and 1999. In December 2011 the state gave up trying to execute Mumia and instead put him on “slow death row”—life imprisonment without parole—and tried to silence him. Mumia has not been silenced, but has been subjected to medical mistreatment and the deliberate refusal to cure his hepatitis C.

Mumia was targeted for state extermination as a Black Panther Party member when he was 16-years-old, renewed when he became a renowned radio journalist, “the voice of the voiceless” and a supporter of the MOVE organization. In the face of execution and life imprisonment Mumia has never wavered in his opposition to and exposure of the racist oppression, class exploitation and murderous terror perpetrated across the globe by U.S. imperialism.

The combined forces of the capitalist state, its police, courts, supported by the politicians in both parties of capitalism are united in keeping Mumia locked in prison.

Now is the time for a renewed international campaign to free Mumia! Winning Mumia's freedom is a blow against the class and race biased American criminal injustice system, a win for all those in imprisoned nation and for us all.

On Ronald Castille, from Prosecutor to Supreme Court Justice

Ronald Castille became an assistant Philadelphia District Attorney in 1971, and a senior assistant at the time of Mumia's 1982 trial. In 1985 he was elected as District Attorney and was the District Attorney during the preparation and legal argument of Mumia Abu-Jamal's direct appeal from his 1982 conviction and death sentence.

Despite the prior motions made for Castille to recuse himself from hearing Mumia's appeals, he has not provided any information regarding participation in Mumia's trial preparation or disclosed his direct oversight and preparation of the District Attorney's office filings and legal arguments during Mumia's direct appeal. As part of Mumia's prior Motions for Justice Castille to recuse himself, discovery was requested but denied in 1996 and in 2002. The new legal filings request discovery of this information.

District Attorney Ronald D. Castille's name appears first in the list of prosecutors submitting the DA's legal briefs arguing in support of Mumia's conviction and death sentence. We do know that one of Castille's first appointments was the promotion of Assistant District Attorney (ADA) Ronald Eisenberg to become Chief of the Appeals Unit. In that capacity Eisenberg began overseeing all the appeals and post-conviction proceedings of Mumia Abu-Jamal, and continued through Mumia's 2011 federal court appeals.

We know that one of Castille's "accomplishments" as District Attorney was the 1986 video training tape on how to exclude African-Americans from juries. It has been known as the "McMahon tape" after then-ADA Jack McMahon who gave the presentation. But the Training Tape was produced by the District Attorney's office. The first frame of the video bears the seal of the City of Philadelphia, name and title of Ronald D. Castille, District Attorney, the logo of *DATV Productions* identifying the videotape as produced by the District Attorney's television productions department. Frame two identifies the videotape as "Jury Selection by Jack McMahon." This Training Tape was the District Attorney's response to the 1985 U.S. Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986) that found unconstitutional the use of race as a reason to eliminate potential jurors. The practice of keeping African-Americans from juries was a long-standing policy and practice in the Philadelphia DA's office and the Training Video was a "how to" as well as "how to conceal" continuing that practice. However, the existence of this training tape was not publicly known until 1997.

In 1986, after Castille's election as District Attorney, the Fraternal Order of Police (FOP) Lodge No. 5 named Castille its "Man of the Year." In 1989, the FOP provided support for Castille's re-election bid for Philadelphia District Attorney.

As District Attorney and prior to his run for Pennsylvania State Supreme Court in 1993, Castille was a vociferous defender of a pattern of prosecutorial misconduct that was prevalent in his office and admonished by the Pennsylvania appeals court, blaming alleged

misconduct on the “pushy, obnoxious” defense lawyers. Two of the Philadelphia prosecutors found to commit misconduct by the appeals court in cases unrelated to Mumia’s were the ADAs in Mumia’s trial (Joseph McGill) and 1995 hearing (Charles Grant).

In 1993 Ronald Castille ran for and won a seat on the Pennsylvania Supreme court as the law and order candidate. He highlighted his support of the death penalty, touting that his office had secured 45 death sentences. He bragged about prosecuting some of the city’s most notorious criminals in recent years. Castille’s campaign ad highlighted his endorsement by 36,000 police officers of the Fraternal Order of Police.

Mumia’s Direct Appeal and the 1989 Pennsylvania Supreme Court Denial

Mumia’s direct appeal of his 1982 conviction and death sentence wasn’t filed until 1986. No challenges were made to the false trial evidence.

The legal argument on Mumia’s appeal took place before the Pennsylvania Supreme Court on January 19, 1988. The first issue of the appeal was that the prosecution systematically excluded African-Americans from Mumia’s jury, depriving him of an impartial jury and that the prosecutor had removed a Black woman juror and replaced her with a white male juror with ties to law enforcement.

Mumia’s legal argument applied the U.S. Court decision of *Batson v. Kentucky*, and argued that the prosecutor violated *Batson*. The District Attorney’s office objected and denied even a *prima facie* case existed, including that Mumia is a Black man and the deceased was a white police officer was not relevant and that there was not even an inference of a pattern of strikes against Black jurors by the prosecution.

Yet, at the very moment the DA’s office argued before the Pennsylvania Supreme Court that there was no disqualification of jurors because of race in Mumia’s case, and no pattern of exclusion of Blacks from Philadelphia juries, District Attorney Castille was training his assistants to do just that with its *DATV Training Tape*.

The most dramatic and memorable portion of that day’s appeal argument was on the issue of trial prosecutor Joseph McGill’s summation argument, made to the jury on the question of Mumia’s guilt and again on the question of whether to sentence him to death or life imprisonment. McGill told the jury that if Mumia were to be convicted, it wasn’t final, that in fact Mumia would have “appeal after appeal.” This argument was a denigration of the decisive role of the jury, of the constitutional protection that reasonable doubt requires acquittal. It was intended to convince the unsure juror that he would not be responsible for a verdict of conviction and execution, because Mumia would have plenty of chances to appeal.

During that argument Pennsylvania Supreme Court Chief Justice Nix interrupted and strongly told the appeal prosecutor not to even try to defend the prosecutor’s “appeal after appeal” summation language. Justice Nix said the Pennsylvania Supreme Court had precedent on this and had already reversed in a case where the same language had been used by the same prosecutor (Joseph McGill) in the same courtroom (Judge Sabo). [*Com. v. Baker*, 511 A.2d 777 (1986)] Nix’s statement brought a hush to the courtroom, leaving the

strong impression that certainly Mumia's death sentence, if not his conviction, would be overturned because of that prosecutorial misconduct. That was not to be.

Another appeal issue was the ADA McGill's cross-examination of Mumia during his "allocution" (statement) to the jury. It was Mumia's statement that he was innocent of the charge against him. He denounced the trial process, from the judge who denied him the right of self-representation and excluded him from the courtroom for large portions of the case to his court appointed attorney not representing him. ADA McGill seized on Mumia's allocution to put him on the witness stand and question him about statements he made in an interview in the *Philadelphia Inquirer* in January 1969—twelve years before his arrest. Mumia's Black Panther Party membership, speech and writing as a 15 and 16-year-old, including saying "all power to the people" and explaining the government's murder of Black Panther Party members nationally as an examples of the historical reality that "political power grows from the barrel of the gun" was used in the prosecution summation to argue Mumia had a decade-long intent to kill cops.

On direct appeal, Mumia argued he should not have been questioned since he hadn't taken the witness stand, that the questioning was irrelevant and prejudicial. And furthermore to question him about his Black Panther Party membership was a violation of his first Amendment constitutionally guaranteed right to political association and speech.

Over a year later on March 6, 1989 the Pennsylvania Supreme Court issued its decision. Justice Nix was listed as "not participating in the decision." Only four of the six Pennsylvania Supreme Court justices signed the decision upholding Mumia's conviction and death sentence.

Mumia filed a Petition for re-argument, which the District Attorney Castille opposed, and was denied by the Pennsylvania Supreme Court in January 1990.

Mumia filed a petition to the U.S. Supreme Court for *certiorari* (review). It was opposed by the District Attorney and denied by the Supreme Court on October 1, 1990.

Then the U.S. Supreme Court agreed to hear the appeal in the case of a prisoner whose Aryan Brotherhood membership was used to argue for his death sentence. Mumia filed for re-hearing of his petition for review, pending the Supreme Court's ruling in that case. The District Attorney opposed a re-hearing and the Supreme Court denied it. In March 1992, the U.S. Supreme Court ruled that to bring up prisoner Dawson's organizational affiliation violated the defendant's freedom of speech and association and overturned his death sentence. (*Dawson v. Delaware*, 503 U.S. 159 (1992).)

It is not conceivable that the positions taken by the District Attorney's office arguments in Mumia's appeal to the Pennsylvania Supreme Court were without direct input from District Attorney Castille. Not only was Mumia Abu-Jamal's case highly controversial and publicized but the issues on his appeal carried far-ranging consequences and import for other cases, particularly the challenge to the prosecution's exclusion of African-American jurors and the prosecution's often-used summation argument that a defendant had "appeal after appeal." Moreover, the District Attorney withheld the fact of the *DATV Training Tape*, while

arguing there was no pattern of exclusion of jurors by reason of race. These all constituted direct and personal involvement of critical issues of the defendant's case and fall under the criteria established by the new *Williams* decision.

Mumia's Post-conviction hearings before Judge Sabo 1995-1997 and Justice Castille's denial to recuse himself

On June 5, 1995, Mumia's first post-conviction challenge was filed. Under Pennsylvania rules, the case was heard by the very same judge who was the trial judge in Mumia's case, the infamous Albert Sabo. But on June 1, 1995, then Governor Tom Ridge signed a warrant for Mumia's execution. That put the evidentiary hearing under the threat and pressure of an impending execution date.

The 1995 Post Conviction Relief Act (PCRA) again raised the issue denied in Mumia's direct appeal. The exclusion and removal of African-American jurors in violation of *Batson* was one of some 32 claims in Mumia's post-conviction petition denied by Judge Sabo. The month long evidentiary hearing also established ineffective assistance of trial counsel, prosecutorial and police misconduct in falsifying a hospital confession, that evidence of Mumia's innocence was suppressed, particularly that one or two men ran from the scene.

Mumia's Appeal brief to the Pennsylvania Supreme Court was filed in January 1996. In August 1996 Mumia filed a Motion for Justice Ronald Castille to recuse himself from participating in the appeal of Judge Sabo's denial of Mumia's PCRA.

The eleven-page recusal motion asserted Justice Castille's actual bias as shown in his support for and by the Fraternal Order of Police, his "law and order" campaign, his virulent support for the death penalty and his defense of the head of the Homicide Unit and other prosecutors in his office, including the prosecutors who tried Mumia's case and his post-conviction appeal, that Pennsylvania Superior Court determined to be prosecutorial misconduct. The motion stated: "the Office of the [Philadelphia] District Attorney's high profile and long-standing public stance in this case [Mumia Abu-Jamal] creates the appearance that the Justice has a vested stake in this case. Accordingly, recusal is warranted."

Castille didn't respond until October 1998.

After the initial appeal brief was filed in January 1996 and while the appeal was pending, new evidence was uncovered. In October 1996, evidence was presented that Veronica Jones, a prosecution witness, had been threatened into falsifying her testimony denying her initial statement that two men ran from the scene. In 1997 Pamela Jenkins came forward stating the main prosecution witness, Cynthia White, had been a prostitute for the cops and threatened into lying that she saw Mumia run across the parking lot and shoot Police Officer Daniel Faulkner. Mumia's petitions to the Pennsylvania Supreme Court for additional evidentiary hearings to take these witnesses' testimony were granted.

But that was not the case when in 1997, the "McMahon" jury training tape was exposed. Mumia made a motion to the Pennsylvania Supreme Court for an additional evidentiary hearing to include this training tape and obtain additional evidence for Mumia's *Batson*

claim on the prosecution's exclusion of Black jurors at his trial. The District Attorney's office opposed the motion with the preposterous claim that the *DATV Training Tape* was only the personal view of then ADA Jack McMahon. The Pennsylvania Supreme Court denied a remand hearing on the Training Tape. (*Com. v. Abu-Jamal*, 720 A.2d 79, 86 (1998))

After the Mumia's Pennsylvania Supreme final briefs were filed, a preliminary version of the Baldus-Woodworth study with statistical evidence of Philadelphia jury selection for the period of 1981-1997, was released. This showed the pattern of the DA's office racially disparate strikes of potential jurors. Mumia filed for leave to supplement the record on appeal with the study, but the Pennsylvania Supreme Court denied that request.

Nonetheless Mumia's Appellant Brief and Reply Brief to the Supreme Court included the jury training tape and the Baldus-Woodworth study.

In October 1998 the Pennsylvania Supreme Court denied all of Mumia's post-conviction appeal claims and Justice Castille simultaneously filed his opinion denying his recusal from participating in Mumia's appeal.

Castille denied recusing himself stating, "Under the existing practice of this Court, recusal has always been a matter of individual discretion or conscience and only the jurist being asked to recuse himself or herself may properly respond to such a request." (*Com. v. Abu-Jamal*, 720 A.2d 121, 122 (1998).) He further asserted he had "no personal connection with appellant's matter." He claimed his office handled an extraordinarily large number of cases and it was, "virtually impossible for any duly-elected District Attorney administering such a caseload to be personally familiar with the details of each and every criminal case and appellate proceeding by the over 225 Assistant District Attorneys, Chiefs or Deputy District Attorneys employed in that office."

But Mumia's case was not an ordinary case or appeal. No other case has engendered the same attention from the Fraternal Order of Police. Castille further stated "recusal is unwarranted, where as here, there has been no allegation or showing of any specific prejudgment or bias against the defendant." Castille did not respond to the fact of the *DATV Training Tape* nor to his defense of the prosecutors who committed misconduct.

Regarding the support he received from the Fraternal Order of Police (FOP), Castille tellingly stated that five other sitting Pennsylvania Supreme Court Justices had the endorsement of the FOP.

New PCRA 2001 before Judge Pamela Dembe and Justice Castille's refusal to recuse himself on the subsequent appeals

On July 3, 2001 another PCRA was filed bringing out the confession of Arnold Beverly that he shot and killed police officer Daniel Faulkner and additional evidence of prosecutorial misconduct and evidence of Mumia's actual innocence. This petition included further challenges to the prosecution's exclusion of African-American jurors. A supplemental Petition was filed soon after with the statement of court reporter Terri Mauer-Carter who

came forward in August 2001 stating that pre-trial she heard Judge Sabo say, “I’m going to help them fry the n----r.”

On December 11, 2001 the PCRA court denied the Petition without a hearing.

In preparing the new appeal to the Pennsylvania Supreme Court, Mumia filed a Motion for Remand to take testimony of Castille regarding his role in the McMahon training tape in May 2002. When that was denied a Motion for Justice Castille’s Recusal was filed. These motions made explicit Justice Castille’s apparent direct responsibility for the *DATV “McMahon” Training Tape* and emphasized that Castille had not disclosed or even addressed his role with the training tape in refusing to recuse himself from the appeals court in deciding Mumia’s 1998 post-conviction appeal.

However Castille had recused himself from deciding whether or not his testimony should be taken on his role with the training tape. This, it was asserted, was an admission by Castille that he should recuse himself from further Supreme Court deliberation on Mumia’s case.

Additionally, Castille’s prejudicial role in deciding any case involving the training tape in the Pennsylvania Supreme Court was pointed out. Of the three Pennsylvania Supreme Court decisions involving the *“McMahon” Training Tape*, the only one in which a trial reversal was granted was the case in which Justice Castille recused himself.

This provided further evidence of Justice Castille’s influence in the Pennsylvania Supreme Court and the prejudicial consequences of his denial to recuse himself in cases involving his offices jury selection practices.

Nonetheless, the 2002 recusal motion was denied without explanation or opinion.

The Pennsylvania Supreme Court denied Mumia’s 2002 post-conviction appeal, refusing to even consider the evidence of Judge Sabo’s racial bias, the confession of Arnold Beverly and additional the violation of *Batson*. (*Com v. Abu-Jamal* 833 A.2d. 719 (Pa. 2003))

In early 2004 another petition for *certiorari* was filed in the U.S. Supreme Court seeking to overturn the Pennsylvania Supreme Court ruling that upheld overt racial bias of the trial and appellate courts. The *cert.* petition also cited Castille refusal to recuse himself from participating in the appeals to the Pennsylvania Supreme Court. This petition for review was denied by the Supreme Court.

It will take a renewed mass international campaign to win Mumia’s Freedom

It took a mass international campaign of publicity and protest to stop the attempt to kill Mumia through the legal lynching of execution. It took continued public outcry and international protest to get Mumia off death row and into general population. The legal decision overturning Mumia’s death sentence was first made in 2001, but the DA’s office appealed that twice to the federal court of appeals and to the U.S. Supreme Court. It was to avoid any possibility of opening Mumia’s conviction that in December 2011, the Philadelphia DA’s office, with the apparent brokerage of Edward Rendell (former Philadelphia DA, then Mayor, then Pennsylvania Governor, then Chair of the Democratic

Party and now remaining one of its prominent national spokesmen) with the Fraternal Order of Police, agreed to stop attempts to execute Mumia, and instead sent Mumia to “slow death row,” life imprisonment without the possibility of parole.

Mumia is now fighting to stay alive and is battling the DOC for life-saving anti-viral medication to cure Hepatitis C that he got from blood transfusions after he was critically shot and beaten by police on December 9, 1981.

But as the history of Mumia’s case in particular and the realities of the American criminal injustice system show us over and over it will take international mass protest for this new legal precedent to be applied to Mumia. This December 9 will be 35 years since Mumia, an innocent man, was framed for a murder he did not commit.

We need to seize on this new legal opening and build a renewed mass international campaign for Mumia’s freedom, Now!

Rachel Wolkenstein began working with Mumia Abu-Jamal in February 1987 as Staff Counsel for the Partisan Defense Committee and was present in the courtroom for the Pennsylvania Supreme Court appeal argument in Mumia’s case in January 1988. For additional information: www.RachelWolkenstein.net

Mumia’s new legal petition was filed on August 7, 2016 by attorneys Judith Ritter and Christina Swarns.

The PCRA petition and appeals from 1995-1998 were filed by the legal team headed by Leonard Weinglass and included Rachel Wolkenstein, Daniel Williams and Jonathan Piper.

The PCRA Petition and appeals from 2001-2003 were filed by attorneys Marlene Kamish, Eliot Lee Grossman, Nick Brown and J. Michael Farrell.