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IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TRIAL DIVISION

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COMMONWEALTH : DECEMBER TERM 1981 (MC)

vs :

MUMIA ABU-JAMAL : 273

- - -

Room 613 City Hall
Philadelphia, Pa.

January 20, 1982

- - -

BEFORE: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

JOSEPH J. MCGILL, Esquire
Assistant District Attorney
For the Commonwealth

ANTHONY E. JACKSON, Esquire
Counsel for the Defendant

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COURT CRIER: Court is in session.

MR. MCGILL: Good afternoon, your Honor.

Your Honor, while Mr. Jackson is getting ready, this is a petition for the return of property, a petition filed by Mr. Jackson.

THE COURT: Do you have a copy of the petition, Mr. Jackson?

MR. JACKSON: Yes, sir. It was filed, your Honor.

THE COURT: All right. It should be in the file, then.

MR. JACKSON: Your Honor, we have never received a property receipt in this matter. I don't know whether in fact one was prepared. And before going forward, sir, I would ask the Commonwealth to provide me with a property receipt, if one exists.

THE COURT: You are talking about a property receipt in regard to the defendant, property of the defendant?

MR. JACKSON: Yes, sir.

MR. MCGILL: Your Honor --

THE COURT: Mr. McGill, do you know if there is a property receipt, and, if so, where

it is?

MR. MCGILL: Your Honor, the property receipt -- we don't have it right now. There is one. And it basically covers a briefcase and items enclosed within --

THE COURT: It's not much of a receipt if the defendant or his counsel doesn't have it.

MR. MCGILL: Excuse me, your Honor?

THE COURT: It's not much of a property receipt if neither the defendant nor his attorney has it.

They are supposed to get a receipt, aren't they?

MR. MCGILL: They would get copies of all things, certainly, at the discovery proceedings, your Honor.

MR. JACKSON: As you well know, your Honor --

THE COURT: Well, when you take possession of property, don't you give a receipt immediately to the defendant?

MR. MCGILL: Well, your Honor, at that point -- if you will hold on for a moment, sir, and let me speak to the detective, to make

exactly what has occurred --

THE COURT: All right.

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MR. MCGILL: Your Honor, we can get a copy of it, and in a short period of time. At the time when it was made out, your Honor, the defendant was in the hospital, and there was some confusion as to who was desirous of getting it, obtaining the receipt. And since there was confusion, we at that time retained it. We can get one, if your Honor would like, at this point.

MR. JACKSON: I don't want to delay the proceedings, but I think if in fact that receipt can be supplied while this hearing goes forward, your Honor, I would appreciate having it.

THE COURT: I would think so, so that we know what we are talking about.

MR. MCGILL: The receipt will indicate, as I say, that the principal item seized was a briefcase and the items contained therein.

THE COURT: Well, can you check on where it is right now, the property receipt, and have it sent over?

MR. MCGILL: Yes, sir.

THE COURT: Well, it apparently is going to refer to a briefcase and certain items contained in the briefcase.

MR. JACKSON: Yes, sir.

MR. MCGILL: Among other items, your Honor.

THE COURT: Pardon?

MR. MCGILL: There were other items seized, your Honor.

THE COURT: All right.

MR. JACKSON: That's the reason I feel the receipt is necessary, your Honor. Because we are suggesting that the police confiscated a number of items--we have a list of items here. And we want to first, before going forward with the argument, sir, resolve that in fact these items were taken. And after that is resolved, we would want to know under what circumstances the Commonwealth is distinguishing some items to be returned and some not to be returned. And it's my understanding thus far that the Commonwealth has no argument as to some items, your Honor, but they do have argument as to others. And if, for example, sir, two items

are shown to have been taken, one is alleged to be evidence and the other is not, we would like to have the benefit of that information.

THE COURT: I presume you have a list of things you claim were taken at the time of the arrest?

MR. JACKSON: I do, your Honor.

THE COURT: Why don't we assume that that's the correct list and go ahead with it?

MR. JACKSON: Fine, sir.

Your Honor, I will read the list into the record.

The following items were taken from Mr. Jamal:

A Samsonite briefcase.

An address book containing numerous addresses.

A passport enclosed within the address book.

Six cannisters of film, color film, 35 millimeter, undeveloped.

Eight audio cassettes, with sound, Ampex.

Six news reporter notebooks.

One Sanyo tape recorder, a micro-mini tape recorder.

One pair of eyeglasses, black horn-rimmed.

One microphone, Electro-voice.

Three eight-by-ten color photographs. Press Credentials for 1976, 1977, 1978, 1979 and 1980.

A wallet containing identification.

A 1981 Press Credential.

There were personal photos, business cards, and the like, contained therein, in that wallet.

There were some items of mail from various parts of the country, also mail from Holland, from Indonesia.

There was some business mail as well that was contained within this briefcase.

There were manuscripts of news articles.

There were five micro-mini audio cassettes, your Honor, additional to those that I have already indicated.

There was a 1981 edition of the New Observer newspaper, and additional information

and material that was in the briefcase.

THE COURT: All of that was in one briefcase?

MR. JACKSON: These items were either in the briefcase or near the briefcase, your Honor.

THE COURT: All right.

MR. JACKSON: On or about his person. My client has attempted to itemize the things that he had in his possession at that time, your Honor. There may be some items that the police are in possession of that for some reason or another have not been included in this list as of this moment. And it is our contention, notwithstanding the evidence that was presented at the preliminary hearing, that none of these items are in any way -- could in any way be considered as evidence or characterized as evidence. And for that reason, sir, we would like them returned immediately.

THE COURT: Mr. McGill?

MR. MCGILL: Yes, your Honor.

THE COURT: First of all, do you know what items were taken from the person of the defendant, either taken from the person of the defendant or were at or near the person of the

defendant?

MR. MCGILL: Of those items that were enumerated, yes, your Honor, I do. And most of those things were in fact seized. There is some question I have -- and I will check with Detective Thomas when he comes back -- as to one or two items.

As to the petition for the return of property, our position, basically, your Honor, is that these items were properly seized, that a portion of these items would in fact be evidence in the case, or may be evidence in the case, at least, sir. I refer particularly to the items which would involve the identification of the individual, sir, showing placement near the scene of the crime, or at the scene of the crime, articles found in the vehicle that he was allegedly driving shortly before, found in the vehicle where it was parked, sir. And these items would be relevant with respect to connecting this defendant, placing him at the scene. And this would go to items which would directly be related to the defendant, whether the items carry the defendant's name on them, or whether the item is a photograph of the

defendant, whether the item identifies the defendant in some other way.

As to items that would not fall into that category, your Honor, that particular category, we would be glad to return.

THE COURT: Well, as to which of the items is there no argument?

MR. MCGILL: Your Honor, I would say --

THE COURT: How about the Samsonite briefcase?

MR. MCGILL: I have no objection to that being taken back.

THE COURT: All right. What about the address book?

MR. MCGILL: I would object to that being returned, sir.

THE COURT: You do object to that being returned?

MR. MCGILL: Yes, sir.

THE COURT: What about the passport?

MR. MCGILL: We object to that being returned, sir.

THE COURT: All right. What about the six cannisters of film?

MR. MCGILL: No objection.

THE COURT: And the audio cassettes?

MR. MCGILL: As to some of those cassettes, your Honor -- I think as to four of those there would be no objection.

THE COURT: And the six notebooks?

MR. MCGILL: Your Honor, I would object to all of those notebooks.

THE COURT: What about the mini-cassette tape recorder?

MR. MCGILL: I don't really know if that is in. If it is, your Honor, I have no objection to that being returned. And I think it is. I think it's there.

THE COURT: What about the eyeglasses?

MR. MCGILL: That's not there, sir.

THE COURT: Not there?

MR. MCGILL: No. If it were, there would be no objection.

THE COURT: What about the microphone?

DETECTIVE THOMAS: There's one item listed, Panasonic, but no microphone. There was a receipt in there for repairs.

MR. MCGILL: As far as that's concerned, that's another one I have a question about. If that can be located, of course, it will be returned.

THE COURT: And the three eight-by-ten color photos?

MR. MCGILL: I'm not sure which ones they are talking about, your Honor. But most of the photographs, your Honor -- I have no objection that they be returned, most of the photographs, sir.

THE COURT: Including those three eight-by-ten photographs?

MR. MCGILL: Again, I'm not sure which ones he is talking about. I believe the ones he is talking about would be all right, the eight-by-ten photographs, but, again, I'm not certain which ones he is referring to.

THE COURT: What about the press credentials?

MR. MCGILL: We would object to those being returned, your Honor. There are photographs on the back of those, sir, taken at different times.

THE COURT: And the wallet?

MR. MCGILL: I would object to that being returned.

THE COURT: What about the 1981 Press card?

MR. MCGILL: That is not in there, your Honor, to our knowledge. There is a Vehicle Code Press Card, which we have no objection to, no objection to its being returned.

THE COURT: How about the personal photos and business cards?

MR. MCGILL: Most of the personal photos can be returned without problem, your Honor. The business cards we would object to.

THE COURT: Pardon?

MR. MCGILL: We would object to the business cards.

THE COURT: How about the mail, the mail with the different addresses, from different places?

MR. MCGILL: Some of the mail I would object to, your Honor, with the defendant's name on it, sir, and different addresses.

THE COURT: And what about the manuscripts?

MR. MCGILL: Those in reference to Mr. Morley and -- well, basically, those in reference to Mr. Morley, along with the cassettes involving those, no objection.

As to the other ones, your Honor, we would object to their being returned, those that would have either his voice or his name on them, sir, which would be connected to his identification.

THE COURT: And there are other cassettes mentioned here, I think some micro-mini cassettes.

MR. MCGILL: Well, your Honor, any cassettes with the defendant's voice on them, sir, we would object to returning. Cassettes with someone else's voice on them, those certainly would be returned without problem.

THE COURT: What about the 1981 edition of the New Observer newspaper?

MR. MCGILL: We have no objection that that be returned, your Honor. We have no objection that any newspapers be returned.

THE COURT: So there is no argument about those?

MR. MCGILL: No, sir.

THE COURT: All right. As to the other items, what is the evidential value? Is it identity?

MR. MCGILL: Yes, your Honor, basically identification, handwriting, name, things of that nature, should it become necessary, sir.

At this point, of course, the defendant obviously has no obligation to let us know anything as far as a defense is concerned. But I think there are other items which were connected to him, sir, with his name and other identifications about him, which may be used on cross-examination. It's difficult to tell, your Honor. But as to those items, they are all based upon identification and work and efforts on his behalf. But as far as involving other people, sir, or newspapers, or anything like that, there is no desire to retain that material.

All of these things, your Honor, were seized appropriately under the law. And, of course, anything in dispute, anything about which there is a dispute, would be properly litigated at a motion to suppress hearing, litigated at that stage, which is another issue, of course.

That is not before the Court at this time.

But I state to the Court, sir, that there is evidentiary value that the Commonwealth sees with respect to certain of these items, and will seek to have those items connected with the defendant.

MR. JACKSON: Your Honor, may it please the Court, before proceeding, sir, I would ask the Commonwealth if in fact there are any other items that they know of that they have in their possession, sir, that they have not indicated so far.

THE COURT: Are there any other items except the ones which Mr. Jackson enumerated? Do you have the property receipt?

MR. MCGILL: Your Honor, there are several items in there -- all of the items, sir, if I may just -- excuse me, your Honor. May I have just a moment, sir?

THE COURT: Yes.

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MR. MCGILL: Thank you, your Honor.

Your Honor, Detective Thomas has just handed to me -- which I will now hand to counsel -- and I will let the Court see it, of

course -- a copy of the property receipt.

MR. JACKSON: Thank you.

MR. MCGILL: All of the items in the briefcase basically fall into categories that have been mentioned in their petition. Instead of three photographs, there may be more. "Business mail," of course, is all-inclusive, includes many things. There are some documents, transcripts, with the defendant's name on them, your Honor, that may not have been mentioned.

But basically, your Honor, the categories themselves are all-inclusive. It just may be that the quantities are not accurate.

MR. JACKSON: May it please the Court, just to disagree with the Commonwealth, as your Honor will note from the property receipt, there is a reference to the briefcase, but if I recall correctly, sir, there is no reference to the wallet. And we don't know if in fact there may be other items as well. There is not a category, in other words, that suggests anything about a wallet. And we have already gotten a concession from the Commonwealth that in fact there was a wallet taken. And I think all we are simply given now is one property receipt. I

don't know if there are others. There may be or may not be. But it seems to me that once the Commonwealth takes possession of items, sir, at some point there ought to be some indication that they have them.

As I say, they have conceded that they have the wallet. I simply want to know what else it is that they have.

THE COURT: I think, at the very least, that you ought to enumerate in detail exactly what is in your possession. You don't have to do that now. But I think the defendant is entitled to know what you have. I suppose they would be entitled to that information under normal discovery proceedings, in any event. So you might as well do that, prepare a list of what you have, when you get back to your office.

MR. MCGILL: I will do that, sir, if your Honor wishes me to do so.

I will state for the record that we certainly will comply with all the rules of court, all the rules of discovery. And if your Honor wants that information to be given to the defendant now, we will do it now, sir.

THE COURT: Yes. With respect to

that information, I don't think you have to wait until formal discovery proceedings.

MR. MCGILL: Very well, sir. I will say, your Honor, that with reference to the Number 12 item -- let me give you a copy that I had Xeroxed, sir -- this is the sheet that was provided by Mr. Jackson -- in reference to Number 12, where it says -- where it speaks of the wallet, identification, and so forth, personal photos, business cards, and also, a little bit later, where it speaks of notebooks -- these things were certainly there, sir. And that's why I say that that area, speaking of notebooks, and so on -- that is a category, your Honor. And there were maybe three or four or five items in that category.

But really, I will say to the Court, sir, that in my perusal of all of the items with Detective Thomas, there really is not a significant -- to my recollection, there is really not a significant difference in those categories with respect to what is enumerated here (indicating), with relation to what is enumerated here, sir, on this sheet.

However, pursuant to your Honor's

order, I will forthwith get a complete itemization of every item that is in the briefcase.

MR. JACKSON: Fine, sir.

Your Honor, with that matter aside, I would first ask your Honor to advise me when we could expect to receive those items from the Commonwealth. I would ask for them forthwith, sir, if that's at all possible.

THE COURT: Let's say late this afternoon or tomorrow morning. I don't see any problem getting them enumerated.

MR. MCGILL: No, your Honor.

MR. JACKSON: I was really talking about the items that the Commonwealth has no objection to, sir.

THE COURT: All right. When can they be returned to the defendant?

MR. MCGILL: Certainly by tomorrow morning, your Honor.

MR. JACKSON: Okay.

THE COURT: Contact Mr. McGill and make the arrangements.

MR. JACKSON: Yes, sir.

THE COURT: The basic position of the District Attorney's Office is that the other

items have some evidentiary value.

MR. JACKSON: May I be heard as to that, your Honor?

THE COURT: Yes.

MR. JACKSON: The Commonwealth has simply made an allegation, "We have certain items, and we are going to use them or may use them as evidence."

It would seem to me, your Honor, that if in fact there is no argument that indeed the items belong to Mr. Jamal, then the Commonwealth has to come forward and say something more than, "We are going to use them as evidence," or, "We may use them as evidence." They have to indicate in what way they are evidence, it would seem to me, in what way they are going to be used.

Now, I know the Commonwealth has indicated that some of the items have identification value, evidentiary value from that standpoint, photo identification, voice identification, things of that nature.

However, if there are several cassettes containing his voice, it seems to me it would only be surplussage to have a lot of tapes, a lot of cassettes. What are they going to do,

your Honor, play all of the tapes? It seems to me that the Commonwealth is keeping them, in fact, for the content, because of the content, not necessarily for the voice.

That's my argument. I submit that if in fact identification is the basis for the Commonwealth's keeping this evidence, if in fact a briefcase was found in the cab, if in fact a wallet was found on his person, it seems to me that the Commonwealth doesn't need each and every item that was found here, sir, either in the cab or on his person, to show them as items of identification, to present them as evidence of identification.

If, again, the items seized in the briefcase, from the briefcase -- and there were a number of items, sir, and I am not going to go through them -- but, for example, the press cards from 1976 to 1981 -- why do they need all of them, your Honor? I am referring to items such as that. I am suggesting to the Court that there is no need for all of them, for the Commonwealth to retain all of them.

We already know -- and certainly the Commonwealth is going to prepare a receipt, sir,

or a list of all of those items seized, a list that's going to say this item was found in the cab, this item was found in the briefcase, this item was found on his person, and so on. That has already been established, sir. We can't damage the evidence, your Honor. And it seems to me that it has already been established that it exists. And if it's only going to be used for identification, if an officer or some other law enforcement official takes the stand and says this was found in the car, this was found on his person, this was found in the briefcase, and he refers to a number of items found in different places, sir, it seems to me that that would only be duplicating the evidence.

I am suggesting to the Court that the content of those tapes, the content on those notebooks, sir, is important to the defense. The Commonwealth has not even suggested that the content of those tapes or of those notebooks is important. And I don't know what the Commonwealth intends to do with them, but I'm sure that if copies have not been made of them -- well, I'm sure they will be.

So it would seem to me, your Honor,

given the right of Mr. Jamal to his own possessions, and the possible potential probative value of those items -- which the Commonwealth has indicated is very minimal -- it would seem to me, your Honor, that the burden is on the Commonwealth to in fact convince your Honor that indeed these particular items have evidentiary value, probative value, that each and every one of the items that they are refusing to return has some specific probative value and that the interests of the Commonwealth would in some way be compromised if they were returned.

MR. MCGILL: May I respond?

THE COURT: Yes.

MR. MCGILL: Very briefly, sir, the burden to present evidence to this Court is properly on the Commonwealth, sir, throughout all proceedings in this matter.

As far as the quality or, in fact, the quantity of evidence presented at trial, sir, to determine this defendant's guilt or innocence, that will be, really, based upon the Commonwealth's discretion in how it presents its case. And for the defense to state that the quantity is too much or too little, sir, or whatever, is in fact

taking our role away from us, sir. Our obligation is to present the evidence to the Court, present our case to the Court as best we can.

All of these items are relevant, sir, the location of the vehicle, the identification of the defendant, the items found in the vehicle and in the briefcase -- all of this is relevant. And this evidence, may it please the Court, may become even more relevant, depending upon the defense.

If there are specific items -- and I mean very specific items, sir -- that the defense wishes and it says it cannot do without because it needs them for its defense, we naturally -- within the ambit of the rules of court, actually -- we would make those items available to the defense. If the item is a tape recording or a photograph, sir, we would make the item available for viewing or for playing, listening to the tape, sir, at our place, our office. We would certainly do that, your Honor. And, therefore, it would not adversely affect the defense at that time.

Also, sir, the petition for return of property is, I might suggest, in a sense premature. But it was agreed to by me simply because

I felt that there were many things early on that may well be of importance to him and which would have no relevance at all to the case. This is why I agreed to the presentation of this motion today. The proper time, however, is after the return of the verdict by the jury.

THE COURT: Well, if some things are totally not relevant to the prosecution --

MR. MCGILL: Yes, sir.

THE COURT: -- the defendant I think has a right to get them back.

MR. MCGILL: Yes, your Honor. And that's why I have agreed to return those items, the ones we have agreed to, as early as tomorrow morning.

And I will say to the Court, and on the record, sir, that at the conclusion of the trial, whatever the result, all non-evidentiary matters will immediately go to the defendant. We are not trying to hold these items for anything except the trial, for purposes of the trial, sir.

MR. JACKSON: Your Honor, just briefly, if I may. Again, your Honor --

THE COURT: I understand your argument.

MR. JACKSON: Fine, sir. Your Honor, there are some items -- and it would seem to me that the one way for me to avoid getting something is to say that it's absolutely necessary. If I say the briefcase is absolutely necessary, then the Commonwealth may change its mind and say, "Maybe we'd better keep that, because the defense is going to use it."

In other words, with respect to any item that we are asking for -- and we have made specific request for all of these eighteen items, sir -- I'm suggesting that the Commonwealth will feel that if it's needed by the defense, then it probably will be needed by the Commonwealth, because of some potential defense.

And it seems to me, again, that Mr. Jamal has rights that persist, your Honor, as your Honor well knows, notwithstanding the burden that the Commonwealth has. And the Commonwealth is not given the authority to simply go in and take each and every thing that they want because it may potentially have some value, probative value.

THE COURT: I understand your argument.

MR. JACKSON: Yes, sir.

THE COURT: The Commonwealth has indicated certain items, categories of items, that are going to be returned to you.

MR. JACKSON: Yes, sir.

THE COURT: I believe seven or eight categories of items.

MR. JACKSON: Yes, sir.

THE COURT: As to the other things, I do see some reason for the Commonwealth to retain them, whether to use them for identification purposes or perhaps for some other evidential purpose.

MR. JACKSON: Without the Commonwealth suggesting what those purposes are, your Honor? Just to say that they are relevant and probative, sir, I don't believe is sufficient. It seems to me that they have the burden of saying more than that.

THE COURT: Well, they did refer to identification, that some of the items would be used for identification purposes.

MR. JACKSON: Yes, sir.

THE COURT: Certain of the items are going to be used in an attempt to identify who was present at the scene, whether or not the

defendant was there, whether or not certain items belong to him, and so on.

MR. JACKSON: I understand that, your Honor. I understand those items are in issue. But I am simply saying, sir, why must each and every one of those items be retained? And I am not, as Mr. McGill suggests, intruding on the Commonwealth's duty to try its case, sir, because they, of course, have that burden. But it seems to me that in the trial of a case, every case, any case, sir, you don't bring forth each and every item which establishes one issue. If identification is in issue, and if an item establishes identification, then you don't need to present all of the other items to establish that.

MR. MCGILL: I would suggest to the Court that that is our decision to make, not Mr. Jackson's.

I would, however, point out to the Court -- and I think this undercuts the primary thrust of the argument of counsel, one of the arguments of counsel, that certain of these items are needed for the defense -- I am saying again, sir, that if he needs anything it will be made available to him.

THE COURT: All right. Well, certain items are going to be returned at this time. As to the others, I can see some argument by the District Attorney's Office. And I think that argument makes sense, that certain items are going to be used for identification purposes, and so on.

So as to the items that are not going to be returned at this time, I am not inclined to order them returned, not at this stage of the proceedings. However, they should be available to the defense. You can certainly inspect them and listen to them and look at them and do whatever is necessary with respect to them.

MR. JACKSON: Fine, your Honor. And I would only ask, in that instance -- I would suggest to the Court that I cannot make effective use of those items that are being retained by myself. I would need my client as well, sir. And we certainly don't want to do that under the auspices of the District Attorney and the District Attorney's Office. And my question would then be, sir, how would those items be made available to us in a way that we could make effective use of them?

MR. MCGILL: Your Honor --

THE COURT: There are several ways of doing it.

Mr. McGill, what is your suggestion?

MR. MCGILL: I didn't mean to interrupt the Court.

Well, your Honor, most of the items are items which are documentary in nature. Those items certainly can be duplicated and provided both to defense counsel and to the defendant.

Those which are audio, your Honor, I'm sure some arrangement can be made with respect to those, whether or not it be that someone be present when the tapes are played, or whatever. This material is within the custody of the police at this time, sir, as well it should be, to maintain the chain of custody, as well as for security purposes. I am sure that arrangements can be made, your Honor. Again, we are not trying to hinder the defense.

THE COURT: All right. As to those items which have to be examined and which can't be copied, I think you can make arrangements to examine those at a location to be agreed upon by counsel, where you can be present with your client and a representative of the District

Attorney's Office can be present.

MR. JACKSON: Fine, sir.

THE COURT: So those items can be examined by you. And if anything else develops where you feel further motions are in order, you can file those.

MR. JACKSON: Am I to understand that the documentary items that the Commonwealth wishes to retain, sir, that they will make copies of them and make them available to me?

MR. MCGILL: I did not say that, your Honor. I said, in response to the statement that his client would have to be present and that it would be difficult for him to get to the District Attorney's Office--I said that as to those items which counsel believes are necessary for his client to view, sir, we can duplicate them, they can be duplicated.

MR. JACKSON: All of them? I am saying, your Honor, all of them?

THE COURT: Well, the address book can be duplicated.

MR. MCGILL: Yes, sir.

THE COURT: The passport you can photostat. The eyeglasses, I don't know what

you're going to do with them.

MR. MCGILL: I don't know if they have them.

THE COURT: Well, I don't know if you need them for any reason.

MR. MCGILL: No, sir. They would be one of the things we are going to return, just like the radio or anything else, sir.

THE COURT: The credentials, business cards -- you can duplicate those. If there are a lot of business cards, maybe you can keep one or two and give the rest back.

MR. MCGILL: If there are a number of them, of course.

MR. JACKSON: I am simply saying that all of those items that the Commonwealth has indicated they want to retain that are documentary your Honor -- I want them copied. Because they are crucial to the defense. So that there is no misunderstanding, your Honor, that we want some and not all, we want copies of all of those items that the Commonwealth has indicated it wants to retain, sir, that are documentary in nature.

THE COURT: Everything that is retained will be duplicated--except those which

require listening to. And if you really feel that you want to have a copy of some tape, I would think that can be done. I think a copy of a tape can be made for defense counsel even if the original is retained by the District Attorney's Office at this stage of the proceedings.

MR. JACKSON: Fine, sir. And that other material will be made available to me tomorrow?

MR. MCGILL: What are you referring to, counsel?

THE COURT: The items you agreed to turn over.

MR. MCGILL: Oh, yes. And, also, you will get the enumerated list that the Court has ordered.

MR. JACKSON: Fine.

THE COURT: Does that take care of everything?

MR. JACKSON: Well, there are several other items which were brought to your attention before, sir. One is the petition to strike the testimony of Cynthia White. I handed that to the Court on the 11th, I believe. And your Honor did not assign a return date for that.

I know there was some question --

THE COURT: Her testimony at the preliminary hearing?

MR. JACKSON: There and here, sir, before your Honor.

THE COURT: At the bail hearing, you mean?

MR. JACKSON: That's right.

MR. MCGILL: In response to that, sir, I believe that that motion will be consolidated with other motions on the motion date. So that at that time --

THE COURT: February 22nd, yes.

MR. JACKSON: Fine, sir.

MR. MCGILL: And we could at that point certainly have the notes of testimony and be able to argue from the notes, sir. I would be prepared to argue at that time.

THE COURT: All right. That is a petition to strike --

MR. JACKSON: Cynthia White's testimony, sir.

THE COURT: All right. Anything else?

MR. JACKSON: Yes, sir. Your Honor

may recall that I had also brought to court, sir, a petition to employ a ballisticians, a petition to employ a pathologist, forensic pathologist, and petitions to employ an investigator and a photographer. I believe I have given counsel for the Commonwealth a copy of each of those petitions. If I have not, sir, I will certainly do so at this time.

THE COURT: You want a ballistics expert?

MR. JACKSON: Yes, sir.

THE COURT: A photographer and an investigator?

MR. JACKSON: Yes, sir.

THE COURT: Any objection to any of those, Mr. McGill?

MR. MCGILL: No, your Honor. Whatever the Court feels is proper, sir. I really don't feel I have standing to object.

THE COURT: I just wanted to know if you have any objection. I'm going to rule.

MR. MCGILL: No, sir, I don't.

THE COURT: What else?

MR. JACKSON: Let's see, your Honor. Ballistics expert, investigator, photographer and

a forensic pathologist.

THE COURT: A forensic pathologist?

MR. JACKSON: Yes, sir.

THE COURT: That might be proper in this case. All right, those are the four petitions you have?

MR. JACKSON: Yes, sir.

THE COURT: Present those four orders and I'll sign them.

MR. JACKSON: Sir?

THE COURT: If you have the orders, I'll sign them.

MR. JACKSON: Your Honor, there is one other item I would like to bring to the Court's attention. And it would be, sir, in the form of an oral motion.

Mr. Jamal, as your Honor may know, is presently being held at the Detention Center, in the hospital wing.

Mr. Jamal, as your Honor again may know, was wounded, sir, at or about the time of his arrest.

Mr. Jamal is a vegetarian, sir, and has been a vegetarian for some twelve or thirteen years. There is a specific diet that he

for, sir, as well as a need for.

Those food items have not been provided to him on a regular basis at the prison.

THE COURT: The test I would use is whether or not the request is so unusual or the food items so difficult to provide that it would cause problems to the prison authorities. There is precedent for granting a special diet under certain circumstances. The question is whether it presents a problem to the prison authorities to comply with such an order.

MR. JACKSON: Well, your Honor, I would respectfully ask your Honor to issue such an order in this case.

The items, your Honor, are raw vegetables, fruit -- some of these items he has already received up at the prison, sir. The problem is he does not receive them on a regular basis, and many times he has to rely on individuals, staff members, using their own initiative to bring them in -- not that they are doing anything which is unauthorized.

THE COURT: Do you have any kind of list of food items that he --

MR. JACKSON: Yes, sir, I do.

THE COURT: I would like to check with the superintendent of prisons and see whether there is any problem with respect to this. If he says they can't get this item or that item to the prison every day, that's a factor I'll have to consider. If he indicates there's no problem in providing this food, I'll probably sign an order to that effect. It's something I'll have to take up with the prison authorities. If it's so impractical that it causes a problem to the prison authorities, I'll have to consider that.

MR. JACKSON: I would suggest to the Court that if indeed it develops that it may be impractical and may present a problem for the prison authorities to provide this food, sir, I'm sure there are resources available that would make those food items available to Mr. Jamal. So if it's a problem for the prison, I'm sure I could make arrangements to have those food items brought to the prison.

THE COURT: Well, you see, I don't know whether that would present other problems.

MR. JACKSON: I don't know either, sir. But the food can certainly be made available; that's my point, your Honor.

THE COURT: Unless there's some objection on the part of the prison authorities that it's too difficult or that it poses a great problem to them, in all likelihood I'll sign an order to that effect. Give me a list of the items you want, and if there's no great problem, then, as I say, I'll probably sign an order to that effect, to provide that those food items be delivered to the prison on a regular basis.

MR. JACKSON: Fine, sir.

THE COURT: Providing that they can be delivered on a regular basis to the prison.

MR. JACKSON: Yes, sir. Thank you, your Honor.

THE COURT: I want to check with the prison authorities first, though.

MR. JACKSON: Yes, sir. I believe that completes my business before the Court.

MR. MCGILL: As far as the employment of an investigator, a photographer, and so forth, forensic pathologist, would there be a dollar limit on that, sir?

THE COURT: Well, I would follow our policy in that regard. We would allow the

standard initial amount. And if there is additional work that needs to be done, you can file an itemization with your pay petition, an itemized statement of what was done, and the trial judge will give that consideration. Generally, you won't run into any great problem if it's shown that the work was necessary and was relevant to the proceedings.

MR. JACKSON: Your Honor, one of the problems -- and I'm not even sure that your Honor has the authority to resolve this problem -- I'm not sure the forensic pathologist and the investigator, sir, will want to wait until the case is over and I file a petition, as your Honor suggests -- I'm not sure they will want to wait that long to be paid. And I'm wondering whether or not there is some provision or might be some provision for an interim payment.

THE COURT: Well, give me a short memorandum on that, and I'll look into it. I'm not promising you any definite results, but maybe we'll work something out that will enable you to proceed with the case.

MR. JACKSON: Thank you, sir.

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Mr.
JACKSON

FRANCIS F. MULLER
Official Court Reporter, Court of Common Pleas
1118 One East Penn Square
Philadelphia, PA 19107
MU 6-3787

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge