

## **New Legal Action is a Path to Mumia's Freedom**

### **January 17, 2018: Court Ordered Hearing For Testimony of former Deputy District Attorney about District Attorney Ronald Castille Documents the DA's Office "Cannot Locate."**

--Rachel Wolkenstein, Esq., Updated, January 12, 2018

On August 7, 2016 Mumia Abu-Jamal filed a new legal action attacking the judicial bias and conflict of interest in his post-conviction appeal denials from 1998-2012. This is a path to overturn Mumia's conviction for a murder he did not commit and win his freedom.

The U.S. Supreme Court issued a precedent-setting decision, *Williams v. Pennsylvania*, 136 S.Ct. 1989 (2016), for the first time ruling 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. The remedy: a new appeal without the participation of the judge, who should have removed himself (recuse) from the appeal process.

Pennsylvania Supreme Court justice Ronald D. Castille was the judge and former prosecutor in the *Williams* case. During Mumia's direct appeal from his conviction, prepared and argued from 1986-1990, Castille was the elected Philadelphia District Attorney, responsible for all the legal briefs and arguments presented by the prosecution to the PA Supreme Court and U.S. Supreme Court to uphold Mumia's conviction and death sentence. After his election as a Justice of the Pennsylvania Supreme Court in 1994, Castille denied every one of Mumia's appeals of his post-conviction challenges to from 1995 -2012.

A win for Mumia in this new legal action requires the judge to find that Judge Ronald Castille had a significant personal involvement in a critical prosecutorial decision in Mumia's case. From the beginning, the District Attorney's office made it clear that they would fight all the way, continuing the cover-up of Mumia's frame-up.

Court of Common Pleas judge Leon Tucker denied the DA's first argument that Mumia's petition should be dismissed as not "timely." On April 28, 2017 the judge issued his first of six orders to date that the DA's office produce all documents and memos showing Castille's involvement in Mumia's case. In its successive responses, the DA's office continues to insist there are no documents evidencing Castille personal involvement in 31 boxes of files. The DA released some 71 pages from the public file with Castille's name on legal pleadings filed by the DA's office. The Judge later ordered those 31 boxes to be submitted to him for *in camera* (private) review.

Through this process, Mumia's attorneys, the NAACP Legal Defense Fund (LDF) and Judith Ritter have demanded complete disclosure of the prosecution's files and an accounting of what files were examined, as well as an evidentiary hearing.

While still denying there is nothing in its files showing Castille's personal interest or role in Mumia's case, *the DA has already produced that evidence*: (1) a March 27, 1990 memo showing Castille's instructions for a report on the status of pending capital cases, including Mumia's, but "cannot locate" Castille's own request letter, and (2) a June 15, 1990 letter from Castille to then-governor Casey urging him to issue death warrants in 16 Philadelphia capital cases where the appeals process was completed. DA Castille's letter states: "*I urge you to send a clear and dramatic message to all police killers that the death penalty actually means something.*"

Mumia's case was still on appeal to the U.S. Supreme Court and a death warrant could not be signed against him. But there is no question that Castille was seeking a death warrant for Mumia, whose execution was demanded by the Fraternal Order of Police (FOP). On May 24, 1990 Castille assigned his Deputy District Attorney Gayle Barthold McLaughlin to oppose Mumia's petition in the U.S. Supreme Court.

*On November 27, 2017 Judge Tucker ordered a court hearing for January 17, 2018 for the Philadelphia District Attorney to "produce former Deputy District Attorney Gayle Barthold McLaughlin to present testimony regarding the content of the documents the DA's office cannot locate."*

### **Ronald Castille – Pro Cop, Pro Death Penalty, Defender of Prosecutorial Misconduct**

Castille was elected DA in 1986, after years as a Senior Assistant District Attorney under Edward Rendell. Fraternal Order of Police (FOP) Lodge No. 5 named Castille its "Man of the Year" and in 1989 supported him for re-election. In 1993 Ronald Castille won a seat on the Pennsylvania Supreme court as the "law and order"

candidate, endorsed by 36,000 police officers and members of the FOP. Castille bragged that his office had secured 45 death sentences--one of those death sentences was to Mumia Abu-Jamal—and that he prosecuted some of the city's most “notorious criminals.”

Castille was also a vociferous defender of a pattern of prosecutorial misconduct that was so prevalent in his office that it was criticized in the Pennsylvania appeals court. 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 post-conviction hearing (Charles Grant).

In 1996 and again in 2002 Mumia brought legal action for Castille to recuse himself from participating as a judge in Mumia's appeals to the PA Supreme Court because of Castille's pro-death penalty, pro-prosecution bias, and his support by and to the FOP. Castille denied Mumia's motions, stating he had no conflict of interest and no direct knowledge of Mumia's case.

Given the targeting of Mumia by the FBI and the Philadelphia police since he was a teenaged Black Panther Party spokesperson, his defense of the MOVE organization and radical journalism, it is inconceivable that District Attorney Castille didn't have a significant personal role as the prosecutor to ensure the PA Supreme Court upheld Mumia Abu-Jamal's conviction and death sentence.

Not only was the FOP relentless in seeking Mumia's execution, but Mumia's trial appeal issues were constitutional challenges to the prosecutorial misconduct central to depriving defendants of even the façade of due process. Mumia's appeals were based on new law decided by the U.S. Supreme Court since his 1982 trial, most importantly on the right to a jury in which African-Americans are not excluded because of their race (*Batson v. Kentucky*, 476 U.S. 79 (1986)) and that a prosecutor cannot undermine the jury's fundamental responsibility as decider for or against a defendant's death sentence. (*Caldwell v. Mississippi*, 472 U.S. 320 (1985), followed by *Commonwealth v. Baker*, 511 Pa. 1, 511 A.2d 777 (1986)). Mumia also challenged the violations to his First Amendment rights to speech and association because the prosecution put into evidence Mumia's teenaged membership in the Black Panther Party as evidence of intent to kill a cop.

Castille was responsible as District Attorney to construct and present legal arguments to the PA Supreme Court, arguing that U.S. Supreme Court and Pa Supreme Court precedents were not applicable in Mumia's case.

One of Castille's “accomplishments” as District Attorney was a 1986 video training tape for prosecutors made in response to the new *Batson* decision. It taught prosecutors how to exclude Black people from juries and sanitize the court record to avoid trial reversals on grounds of racial discrimination in the selection of jurors. This training tape was proof of the decades-long pattern and practice of unconstitutional exclusion of jurors on the basis of race. The existence of this training tape was not publicly known until 1997. Castille denied any responsibility for the DA training tape that was produced under his name. Mumia's jury discrimination claims were opposed by District Attorney Castille, and denied by the PA appeals courts.

### **What A Win in this Legal Action Means**

Under *Williams*, all of Mumia's appeals to the Pa Supreme Court from 1995-2012 should be vacated—dismissed—and a new appeal brought to the Supreme Court. In other words, Mumia would be able to re-appeal the entirety of his conviction before the Pennsylvania Supreme Court; beginning with the fact that his pro-cop, pro-death penalty trial judge Albert Sabo was racially biased. Sabo declared before trial, “I'm going to help them fry the n---r.”

Mumia could also re-appeal the evidence of his innocence and the police and prosecution manufacture 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 for the murder of police officer Daniel Faulkner.

If the new legal action wins, Mumia's conviction is wide-open to be reversed on appeal, which could result in the grant of a new trial, if not dismissal, on grounds of gross state misconduct in prosecuting Mumia. The *Williams* decision, as the basis of the new legal action for Mumia, is a path for Mumia's freedom. To succeed in the courts requires mass international publicity and protest! Mumia is innocent and framed! Free Mumia, Now!

*For additional formation: [www.RachelWolkenstein.net](http://www.RachelWolkenstein.net) (labor donated)*